

CHAPTER 121

SCHOOL FINANCE

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Cross-reference: See definitions in s. 115.001.

SUBCHAPTER I DEFINITIONS AND GENERAL PROVISIONS

121.004 Definitions. In this chapter, unless the context clearly requires otherwise:

(1) **AVERAGE DAILY MEMBERSHIP.** “Average daily membership” is the sum of all pupils enrolled in all schools of the school district for each day of the school term, divided by the number of days school is actually taught. If it contains a fraction, the quotient shall be expressed as the nearest whole number.

(2) **EQUALIZED VALUATION.** The “equalized valuation” of a school district is the full value of the taxable property of the territory in the school district as certified for the prior year under s. 121.06 (2), excluding value adjustments made under s. 70.57 (1) resulting from appeals made under s. 70.995. The “equalized valuation” of any taxable property in a tax incremental district shall not exceed its equalized value determined for the purpose of obtaining the tax incremental base of that district under s. 66.46.

(3) **FUND.** “Fund” is an independent accounting entity, as prescribed under s. 115.28 (13).

(4) **GROSS COST.** The “gross cost” of a fund means the sum of all nonduplicative expenditures from and other financing uses of that fund.

(5) **MEMBERSHIP.** “Membership” for any school district is the sum of pupils enrolled as reported under s. 121.05 and the summer average daily membership equivalent for classes approved under s. 121.14.

(6) **NET COST.** The “net cost” of a fund means the gross cost of that fund minus all nonduplicative revenues and other financing sources of that fund except property taxes and general aid. In this subsection, “nonduplicative revenues” includes federal financial

assistance under 20 USC 236 to 245, to the extent permitted under federal law and regulations.

(7) **PUPILS ENROLLED.** (a) “Pupils enrolled” is the total number of pupils, as expressed by official enrollments, in all schools of the school district, except as provided in pars. (b) to (d). If such total contains a fraction, it shall be expressed as the nearest whole number. The same method shall be used in computing the number of pupils enrolled for resident pupils, nonresident pupils or both.

(b) A first grade pupil may be counted only if the pupil attains the age permitted under s. 115.28 (8) or required under s. 118.14 for first grade admission.

(c) 1. A pupil enrolled in kindergarten may be counted only if the pupil attains the age permitted under s. 115.28 (8) or required under s. 118.14 for kindergarten admission. A kindergarten pupil shall be counted as one-half pupil except that:

a. A pupil enrolled in a 5-year-old kindergarten program requiring full-day attendance for 5 days a week for an entire school year shall be counted as one pupil.

b. A pupil enrolled in a 5-year-old kindergarten program requiring full-day attendance for less than 5 days a week for an entire school year shall be counted as the result obtained by multiplying the number of hours in each day in which the pupil is enrolled by the total number of days for which the pupil is enrolled, and dividing the result by the product of the number of hours of attendance per day required of first grade pupils in the school district multiplied by 180.

2. In subd. 1. a. and b., “full-day” means the length of the school day for pupils in the first grade of the school district operating the 5-year-old kindergarten program.

(cm) A pupil enrolled in a 4-year-old kindergarten program that provides the required number of hours of direct pupil instruction under s. 121.02 (1) (f) 2. shall be counted as 0.6 pupil if the program annually provides at least 87.5 additional hours of outreach activities.

(d) A pupil enrolled in a preschool program under subch. V of ch. 115 who is 3 years of age or older shall be counted as one-half pupil.

(8) **SUMMER AVERAGE DAILY MEMBERSHIP EQUIVALENT.** “Summer average daily membership equivalent” is the sum of all summer classroom or laboratory periods in which each pupil is enrolled, as determined by multiplying the total number of periods in each day in which the pupil is enrolled by the total number of days for which the pupil is enrolled, divided by 1,080.

(9) **TEACHER-PUPIL RATIO.** “Teacher-pupil ratio” is the quotient of the number of pupils enrolled divided by the number of teachers employed.

(10) **TEACHERS EMPLOYED.** “Teacher” means a person holding a license or certificate under s. 115.28 (7), but does not include any person under s. 115.29 (3). In computing the number of teachers employed, professional workers who devote less than full time to their professional duties shall be counted in proportion to the time devoted to such duties. Teachers who devote full time to handicapped children shall not be counted.

History: 1977 c. 29 ss. 1081, 1085e, 1085m; 1977 c. 418, 429; 1979 c. 34, 221; 1979 c. 346 s. 15; 1981 c. 20, 317; 1983 a. 27, 189; 1985 a. 29; 1987 a. 27; 1991 a. 39, 48; 1993 a. 16.

121.006 State aid withheld. (1) (a) The department may withhold state aid from any school district in which the scope and character of the work are not maintained in such manner as to meet the department’s approval.

NOTE: Par. (a) is shown as amended eff. 1–1–96 by 1995 Wis. Act 27. The treatment by Act 27 was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95–2168–OA. Prior to Act 27 it read:

(a) The state superintendent may withhold state aid from any school district in which the scope and character of the work are not maintained in such manner as to meet the state superintendent’s approval.

(b) No state aid may be paid in any year under this chapter to a school district which fails to meet the requirements under sub. (2).

(2) Unless the department is satisfied that the failure to meet the requirements of pars. (a) and (b) was occasioned by some extraordinary cause not arising from intention or neglect on the part of the responsible officers, every school district shall:

NOTE: Sub. (2) (intro.) is shown as amended eff. 1–1–96 by 1995 Wis. Act 27. The treatment by Act 27 was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95–2168–OA. Prior to Act 27 it read:

(2) Unless the state superintendent is satisfied that the failure to meet the requirements of pars. (a) and (b) was occasioned by some extraordinary cause not arising from intention or neglect on the part of the responsible officers, every school district shall:

(a) Hold school for at least 180 days each year, less any days during which the department determines that school is not held or educational standards are not maintained as the result of a strike by school district employees, the days to be computed in accordance with s. 115.01 (10).

NOTE: Par. (a) is shown as amended eff. 1–1–96 by 1995 Wis. Act 27. The treatment by Act 27 was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95–2168–OA. Prior to Act 27 it read:

(a) Hold school for at least 180 days each year, less any days during which the state superintendent determines that school is not held or educational standards are not maintained as the result of a strike by school district employees, the days to be computed in accordance with s. 115.01 (10).

(b) Employ teachers qualified under s. 118.19.

(c) File all reports as required by state law.

(5) In the event of a school district labor dispute, s. 121.23 shall apply.

History: 1973 c. 90, 157; 1977 c. 26; 1977 c. 29 s. 1097; 1977 c. 178, 203, 206, 273, 447; Stats. 1977 s. 121.006; 1979 c. 221; 1995 a. 27 ss. 4031, 9145 (1).

121.007 Use of state aid; exemption from execution. All moneys paid to a school district under s. 20.255 (2) (ac), (bc), (bm), (cg) and (cr) shall be used by the school district solely for the purposes for which paid. Such moneys are exempt from execution, attachment, garnishment or other process in favor of creditors, except as to claims for salaries or wages of teachers and other

school employes and as to claims for school materials, supplies, fuel and current repairs.

History: 1971 c. 125 s. 522 (1); 1973 c. 90; 1975 c. 39, 220; 1977 c. 29 s. 1099; Stats. 1977 s. 121.007; 1979 c. 34 s. 2102 (43) (a); 1979 c. 221; 1981 c. 20; 1983 a. 27 s. 2202 (42); 1983 a. 538; 1989 a. 31, 336; 1993 a. 16.

SUBCHAPTER II

GENERAL AID

121.01 Purpose. It is declared to be the policy of this state that education is a state function and that some relief should be afforded from the local general property tax as a source of public school revenue where such tax is excessive, and that other sources of revenue should contribute a larger percentage of the total funds needed. It is further declared that in order to provide reasonable equality of educational opportunity for all the children of this state, the state must guarantee that a basic educational opportunity be available to each pupil, but that the state should be obligated to contribute to the educational program only if the school district provides a program which meets state standards. It is the purpose of the state aid formula set forth in this subchapter to cause the state to assume a greater proportion of the costs of public education and to relieve the general property of some of its tax burden.

The general equalization formula under ch. 121 is constitutional under both art. I, sec. 1 and art. X, sec. 3 of the Wisconsin constitution. *Kukor v. Grover*, 148 W (2d) 469, 436 NW (2d) 568 (1989).

A “uniform” education: reform of local property tax school finance systems through state constitutions. 62 MLR 565.

121.02 School district standards. (1) Each school board shall:

(a) 1. Ensure that every teacher, supervisor, administrator and professional staff member holds a certificate, license or permit to teach issued by the department before entering on duties for such position.

2. Ensure that all instructional staff of charter schools located in the school district hold a license or permit to teach issued by the department. The department shall promulgate rules defining “instructional staff” for purposes of this subdivision.

NOTE: Subd. 2. is shown as amended eff. 1–1–96 by 1995 Wis. Act 27. The treatment by Act 27 was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95–2168–OA. Prior to Act 27 it read:

2. Ensure that all instructional staff of charter schools located in the school district hold a license or permit to teach issued by the department. The state superintendent shall promulgate rules defining “instructional staff” for purposes of this subdivision.

(b) Annually, establish with school board employes a professional staff development plan designed to meet the needs of individuals or curriculum areas in each school.

(c) Provide remedial reading services for a pupil in grades kindergarten to 4 if any of the following occurs:

1. The pupil fails to meet the reading objectives specified in the reading curriculum plan developed by the school board under par. (k).

2. The pupil fails to score above the state minimum performance standard on the reading test under par. (r) and:

a. A teacher in the school district and the pupil’s parent or guardian agree that the pupil’s test performance accurately reflects the pupil’s reading ability; or

b. A teacher in the school district determines, based on other objective evidence of the pupil’s reading comprehension, that the pupil’s test performance accurately reflects the pupil’s reading ability.

(d) Operate a 5-year-old kindergarten program, except in union high school districts.

(e) Provide guidance and counseling services.

(f) 1. Schedule at least 180 school days annually, less any days during which the department determines that school is not held or educational standards are not maintained as the result of a strike by school district employes.

NOTE: Subd. 1. is shown as amended eff. 1–1–96 by 1995 Wis. Act 27. The treatment by Act 27 was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95–2168–OA. Prior to Act 27 it read:

1. Schedule at least 180 school days annually, less any days during which the state superintendent determines that school is not held or educational standards are not maintained as the result of a strike by school district employees.

2. Annually, schedule at least 437 hours of direct pupil instruction in kindergarten, at least 1,050 hours of direct pupil instruction in grades 1 to 6 and at least 1,137 hours of direct pupil instruction in grades 7 to 12. Scheduled hours under this subdivision include recess and time for pupils to transfer between classes but do not include the lunch period. A school board operating a 4-year-old kindergarten program may use up to 87.5 of the scheduled hours for outreach activities.

(g) Provide for emergency nursing services.

(h) Provide adequate instructional materials, texts and library services which reflect the cultural diversity and pluralistic nature of American society.

(i) Provide safe and healthful facilities. The facilities shall comply with ss. 254.11 to 254.178 and any rule promulgated under those sections.

(j) Ensure that instruction in elementary and high schools in health, physical education, art and music is provided by qualified teachers.

(k) 1. By September 1, 1988, develop a written, sequential curriculum plan in at least 3 of the following subject areas: reading, language arts, mathematics, social studies, science, health, computer literacy, environmental education, vocational education, physical education, art and music. The plan shall specify objectives, course content and resources and shall include a program evaluation method.

2. By September 1, 1989, develop a written, sequential curriculum plan in at least 3 additional subject areas specified in subd. 1.

3. By September 1, 1990, develop a written, sequential curriculum plan in all of the remaining subject areas specified in subd. 1.

(L) 1. In the elementary grades, provide regular instruction in reading, language arts, social studies, mathematics, science, health, physical education, art and music.

2. In grades 5 to 8, provide regular instruction in language arts, social studies, mathematics, science, health, physical education, art and music. The school board shall also provide pupils with an introduction to career exploration and planning.

3. In grades 9 to 12, provide access to an educational program that enables pupils each year to study English, social studies, mathematics, science, vocational education, foreign language, physical education, art and music. In this subdivision, “access” means an opportunity to study through school district course offerings, independent study, cooperative educational service agencies or cooperative arrangements between school boards and postsecondary educational institutions.

4. Beginning September 1, 1991, as part of the social studies curriculum, include instruction in the history, culture and tribal sovereignty of the federally recognized American Indian tribes and bands located in this state at least twice in the elementary grades and at least once in the high school grades.

5. Provide regular instruction in foreign language in grades 7 and 8 beginning in the 1996–97 school year.

(m) Provide access to an education for employment program approved by the department. Beginning in the 1997–98 school year, the program shall incorporate applied curricula; guidance and counseling services under par. (e); technical preparation under s. 118.34; college preparation; youth apprenticeship under s. 106.13 or other job training and work experience; and instruction in skills relating to employment. The department shall assist school boards in complying with this paragraph.

NOTE: Par. (m) is shown as amended by 1995 Wis. Act 27. The treatment by Act 27, s. 9145 (1), was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95–2168–OA. Par. (m) as not affected by Act 27 s. 9145 (1) reads as follows:

(m) Provide access to an education for employment program approved by the state superintendent. Beginning in the 1997–98 school year, the program shall incorporate applied curricula; guidance and counseling services under par. (e); technical preparation under s. 118.34; college preparation; youth apprenticeship under s. 101.265 or other job training and work experience; and instruction in skills relating to employment. The state superintendent shall assist school boards in complying with this paragraph.

(n) Develop a plan for children at risk under s. 118.153.

(o) Annually distribute the performance disclosure report under s. 115.38 (2). The school board may include additional information in the report.

(p) Comply with high school graduation standards under s. 118.33 (1).

(q) Evaluate, in writing, the performance of all certified school personnel at the end of their first year and at least every 3rd year thereafter.

(r) Annually administer a standardized reading test developed by the department to all pupils enrolled in the school district in grade 3, including pupils enrolled in charter schools located in the school district.

(s) Beginning in the 1993–94 school year, administer the examinations required by the department under s. 118.30 (1m) (am) and (b), and beginning in the 1996–97 school year, administer the examination required by the department under s. 118.30 (1m) (a).

NOTE: Par. (s) is shown as amended eff. 1–1–96 by 1995 Wis. Act 27. The treatment by Act 27 was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95–2168–OA. Prior to Act 27 it read:

(s) Beginning in the 1993–94 school year, administer the examinations required by the state superintendent under s. 118.30 (1m) (am) and (b), and beginning in the 1996–97 school year, administer the examination required by the state superintendent under s. 118.30 (1m) (a).

(t) Provide access to an appropriate program for pupils identified as gifted or talented.

(1m) A school district may provide for scoring the test administered under sub. (1) (r) or have it scored by the department. If the school district provides for scoring the test, the department shall reimburse the school district for the cost of scoring the test, not exceeding what the department’s cost would be to score the test. Costs of scoring the tests and reimbursing school districts for scoring the tests shall be paid from the appropriation under s. 20.255 (1) (a).

(2) In order to ensure compliance with the standards under sub. (1), the department shall conduct an inquiry into compliance with the standards upon receipt of a complaint and may, on its own initiative, conduct an audit of a school district.

(3) Prior to any finding that a school district is not in compliance with the standards under sub. (1), the department shall, upon request of the school board or upon receipt of a petition signed by the maximum number of electors allowed for nomination papers of school district officers under s. 8.10 (3) (i), (km) or (ks), conduct a public hearing in the school district. If the department, after the hearing, finds that the district is not in compliance with the standards, the department may develop with the school board a plan which describes methods of achieving compliance. The plan shall specify the time within which compliance shall be achieved. The department shall withhold up to 25% of state aid from any school district that fails to achieve compliance within the specified period.

NOTE: Sub. (3) is shown as amended eff. 1–1–96 by 1995 Wis. Act 27. The treatment by Act 27 was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95–2168–OA. Prior to Act 27 it read:

(3) Prior to any finding that a school district is not in compliance with the standards under sub. (1), the state superintendent shall, upon request of the school board or upon receipt of a petition signed by the maximum number of electors allowed for nomination papers of school district officers under s. 8.10 (3) (i), (km) or (ks), conduct a public hearing in the school district. If the state superintendent, after the hearing, finds that the district is not in compliance with the standards, the state superintendent may develop with the school board a plan which describes methods of achieving compliance. The plan shall specify the time within which compliance shall be achieved. The state superintendent shall withhold up to 25% of state aid from any school district that fails to achieve compliance within the specified period.

(4) Any school district which is completely surrounded by water may meet the requirements of this section by being in sub-

stantial compliance with the standards in sub. (1). Annually by August 15, the school district shall submit to the department for approval a report describing the methods by which the school district intends to substantially comply with the standards. The department shall allow any such school district maximum flexibility in the school district's substantial compliance plans.

NOTE: Sub. (4) is shown as amended eff. 1–1–96 by 1995 Wis. Act 27. The treatment by Act 27 was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95–2168–OA. Prior to Act 27 it read:

(4) Any school district which is completely surrounded by water may meet the requirements of this section by being in substantial compliance with the standards in sub. (1). Annually by August 15, the school district shall submit to the state superintendent for approval a report describing the methods by which the school district intends to substantially comply with the standards. The state superintendent shall allow any such school district maximum flexibility in the school district's substantial compliance plans.

(5) The department shall promulgate rules to implement and administer this section, including rules defining “regular instruction” for the purpose of sub. (1) (L) 1. and 2.

NOTE: Sub. (5) is shown as amended eff. 1–1–96 by 1995 Wis. Act 27. The treatment by Act 27 was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95–2168–OA. Prior to Act 27 it read:

(5) The state superintendent shall promulgate rules to implement and administer this section, including rules defining “regular instruction” for the purpose of sub. (1) (L) 1. and 2.

History: 1973 c. 90, 115, 243, 333; 1975 c. 39, 198; 1977 c. 29, 178, 206, 418, 429, 447; 1979 c. 34, 221; 1985 a. 29, 228; 1987 a. 27, 399; 1989 a. 31, 285; 1991 a. 48, 269; 1993 a. 16, 339, 430, 450; 1995 a. 27 ss. 4036 to 4038, 9145 (1).

121.05 Budget and membership report. (1) The school district clerk shall include, as part of the annual school district report under s. 120.18:

(a) The average of the number of pupils enrolled on the 3rd Friday of September and the 2nd Friday of January of the previous school year, including:

1. Pupils enrolled concurrently in the school district and in a special education program operated by a county handicapped children's education board and in facilities of the school district. This subdivision does not apply beginning on the effective date of a resolution adopted under s. 115.86 (9) (c);

2. Pupils enrolled in home instruction or any other school district special education program under s. 115.83;

3. Pupils for whom tuition is paid under s. 121.78; and

4. Pupils enrolled in a private school under s. 119.23.

5. Pupils attending an institution of higher education under s. 118.37.

6. Pupils enrolled in a special education program operated by a county handicapped children's education board under contract with the school board. This subdivision applies beginning on the effective date of a resolution adopted under s. 115.86 (9) (c).

7. Pupils enrolled in a nonsectarian private school or program under s. 118.15 (1) (d) 4.

8. Pupils enrolled in a residential school operated by the state under subch. III of ch. 115 for whom the school district is paying tuition under s. 115.53 (2) determined by multiplying the total number of periods in each day in which the pupils are enrolled in the local public school by the total number of days for which the pupils are enrolled in the local public school and dividing the product by 1,080.

9. Pupils enrolled in a charter school under s. 118.40.

10. Pupils attending a private school or agency under contract with the board under s. 119.235.

(b) The number of teachers employed in the school district on the 3rd Friday of September of the previous school year.

(c) The estimated budget for the current school year which shall be based upon the uniform accounting system prescribed by the department.

(d) The number of pupils for whom contracts with private education services are entered into under s. 120.13 (26).

(3) If a school district is unable to hold school on either of the 2 dates specified in sub. (1) (a), the department shall designate alternative membership counting dates.

NOTE: Sub. (3) is shown as amended eff. 1–1–96 by 1995 Wis. Act 27. The treatment by Act 27 was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95–2168–OA. Prior to Act 27 it read:

(3) If a school district is unable to hold school on either of the 2 dates specified in sub. (1) (a), the state superintendent shall designate alternative membership counting dates.

(4) Beginning in the 1994–95 school year, the school board of a school district in which a foster or group home that is not exempt under s. 70.11 is located may submit a report to the department. If the school board submits a report, it shall submit it by June 30. The report shall indicate, on a full–time equivalent basis, the number of pupils residing in such foster or group homes who were provided educational services by the school district during the current school year but were not included in the September or January membership count under sub. (1) (a). The department shall adjust the school district's membership based on the report. The department shall make proportional adjustments to the memberships of the school districts in which the pupil was previously enrolled during that school year. The department shall obtain from such school districts the information necessary to make such adjustments. The department shall promulgate rules to implement and administer this subsection.

NOTE: Sub. (4) is shown as amended eff. 1–1–96 by 1995 Wis. Act 27. The treatment by Act 27 was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95–2168–OA. Prior to Act 27 it read:

(4) Beginning in the 1994–95 school year, the school board of a school district in which a foster or group home that is not exempt under s. 70.11 is located may submit a report to the state superintendent. If the school board submits a report, it shall submit it by June 30. The report shall indicate, on a full–time equivalent basis, the number of pupils residing in such foster or group homes who were provided educational services by the school district during the current school year but were not included in the September or January membership count under sub. (1) (a). The state superintendent shall adjust the school district's membership based on the report. The state superintendent shall make proportional adjustments to the memberships of the school districts in which the pupil was previously enrolled during that school year. The state superintendent shall obtain from such school districts the information necessary to make such adjustments. The state superintendent shall promulgate rules to implement and administer this subsection.

History: 1971 c. 125; 1973 c. 89; 1975 c. 224; 1977 c. 29, 418; 1979 c. 34, 221, 244; 1981 c. 20, 251; 1983 a. 27, 192, 509; 1985 a. 29, 218; 1985 a. 225 s. 100; 1987 a. 27, 399; 1989 a. 336; 1991 a. 39; 1993 a. 16, 395; 1995 a. 27 ss. 4040x, 4042, 9145 (1); 1995 a. 225.

121.06 Determination and certification of equalized valuation. (1) Annually on or before October 1, the full value of the taxable property in each part of each city, village and town in each school district shall be determined by the department of revenue according to its best judgment from all sources of information available to it and shall be certified by the department of revenue to the department.

NOTE: Sub. (1) is shown as amended eff. 1–1–96 by 1995 Wis. Act 27. The treatment by Act 27 was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95–2168–OA. Prior to Act 27 it read:

(1) Annually on or before October 1, the full value of the taxable property in each part of each city, village and town in each school district shall be determined by the department of revenue according to its best judgment from all sources of information available to it and shall be certified by the department to the state superintendent.

(2) The department shall certify to each school district clerk the appropriate full values certified to the department under sub. (1).

NOTE: Sub. (2) is shown as amended eff. 1–1–96 by 1995 Wis. Act 27. The treatment by Act 27 was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95–2168–OA. Prior to Act 27 it read:

(2) The state superintendent shall certify to each school district clerk the appropriate full values certified to the state superintendent under sub. (1).

(3) Beginning in the 1984–85 school year and thereafter, for purposes of computing state aid under s. 121.08 equalized valuations calculated under sub. (1) and certified under sub. (2) shall exclude property taxed under s. 70.114, 1981 stats., s. 70.116, 1981 stats., s. 70.117, 1981 stats., or s. 70.175, 1981 stats.

History: 1973 c. 61, 90; 1977 c. 29 ss. 1084, 1647 (13); 1977 c. 300 s. 8; 1981 c. 20; 1983 a. 27; 1985 a. 225; 1987 a. 403 s. 256; 1989 a. 336; 1993 a. 307; 1995 a. 27 ss. 4044, 9145 (1).

121.07 General provisions; state aid computation. In this subchapter:

(1) BASIS FOR STATISTICS. (a) The membership of the school district in the previous school year and the shared cost for the pre-

vious school year shall be used in computing general aid, except that beginning with state aid paid in the 1995–96 school year the membership used to compute state aid to the school district operating under ch. 119 shall include those pupils who are attending a private school under s. 119.23 in the current school year and were enrolled in grades kindergarten to 3 in a private school located in the city of Milwaukee other than under s. 119.23 in the previous school year. If a school district has a state trust fund loan as a result of s. 24.61 (3) (c) 2., the school district's debt service costs shall be based upon current school year costs for the term of the loan and for one additional school year.

(b) If the school district valuation is increased or decreased due to an alteration in school district boundaries before the 3rd Friday in September, the estimated shared cost for the current school year and the estimated mill levy rate shall be based on the school district equalized valuation of the territory comprising the altered school district.

(c) If an order of school district reorganization under ch. 117 is not effective due to litigation until after the 3rd Friday in September but takes effect before April 1 of the current school year, state aid for any affected school district for the first year of operation shall be computed after the order takes effect using calculations by the department of the number of pupils enrolled and teacher–pupil ratio for the territory in the affected school district, which shall be made as if the school district had been in existence on the 3rd Friday in September.

NOTE: Par. (c) is shown as amended eff. 1–1–96 by 1995 Wis. Act 27. The treatment by Act 27 was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95–2168–OA. Prior to Act 27 it read:

(c) If an order of school district reorganization under ch. 117 is not effective due to litigation until after the 3rd Friday in September but takes effect before April 1 of the current school year, state aid for any affected school district for the first year of operation shall be computed after the order takes effect using calculations by the state superintendent of the number of pupils enrolled and teacher–pupil ratio for the territory in the affected school district, which shall be made as if the school district had been in existence on the 3rd Friday in September.

(6) SHARED COST. (a) “Shared cost” is the sum of the net cost of the general fund and the net cost of the debt service fund, except that “shared cost” excludes any costs, including attorney fees, incurred by a school district as a result of its participation in a lawsuit commenced against the state, beginning with such costs incurred in the fiscal year in which the lawsuit is commenced. In this paragraph, “net cost of the debt service fund” includes all of the following amounts:

1. If a school board makes an expenditure from a capital expansion fund created under s. 120.10 (10m), an amount determined by dividing the expenditure by the number of years in which the school district levied a tax for the capital project. This subdivision applies for the number of years equal to the number of years in which the school district levied a tax for the capital project.

2. The annual cost of leasing a school or other school district facility if the lease provides for construction of the school or facility and the lease either provides that ownership of the school or facility transfers to the school district at the termination of the lease or provides an option for such a transfer.

(am) 1. In calculating shared cost under par. (a) for the purpose of computing state aid paid under s. 121.08 in the 1997–98 to 2000–01 school years, if a school district's equalized valuation exceeds its tertiary guaranteed valuation, the department shall deduct an amount equal to the following percentages of the amount received by the school district under s. 121.85 (6) (b) 3. in the 1995–96 school year that is in addition to the amount received by the school district under s. 121.85 (6) (b) 2. in that school year:

- a. In the 1997–98 school year, 100%.
- b. In the 1998–99 school year, 75%.
- c. In the 1999–2000 school year, 50%.
- d. In the 2000–01 school year, 25%.

2. The amount deducted under subd. 1. may not exceed the amount by which the school district's shared cost, including the additional aid paid under s. 121.85 (6) (b) 3. in the 1995–96 school year, exceeds the school district's secondary ceiling cost per member multiplied by its membership.

(b) The “primary ceiling cost per member” is \$1,000.

(c) The “primary shared cost” is that portion of a district's shared cost which is less than or equal to the primary ceiling cost per member multiplied by its membership.

(d) 1. The “secondary ceiling cost per member” in the 1996–97 school year is an amount determined by multiplying the primary ceiling cost per member in the 1995–96 school year by 1.0 plus the rate certified under s. 73.03 (46) expressed as a decimal.

2. The “secondary ceiling cost per member” in the 1997–98 school year and in each school year thereafter is an amount determined by multiplying the secondary ceiling cost per member in the previous school year by 1.0 plus the rate certified under s. 73.03 (46) expressed as a decimal.

(dg) The “secondary shared cost” is that portion of a school district's shared cost which is greater than the primary ceiling cost per member multiplied by its membership and less than or equal to the secondary ceiling cost per member multiplied by its membership.

(dr) The “tertiary shared cost” is that portion of a school district's shared cost which is greater than the secondary ceiling cost per member multiplied by its membership.

(e) For a school district created by a consolidation under s. 117.08 or 117.09, in the school year in which the consolidation takes effect and in each of the subsequent 4 school years, the amounts under pars. (b) and (d) shall be multiplied by 1.1 and rounded to the next lowest dollar.

(7) GUARANTEED VALUATION PER MEMBER. (a) The “primary guaranteed valuation per member” is \$2,000,000.

(b) The “secondary guaranteed valuation per member” is an amount, rounded to the next lower dollar, that, after subtraction of payments under ss. 121.09, 121.10, 121.105, 121.85 (6) (b) 2. and 3. and (c) and 121.86, fully distributes the amount remaining in the appropriation under s. 20.255 (2) (ac) for payments under ss. 121.08 and 121.85 (6) (a) and (g).

(bm) The “tertiary guaranteed valuation per member” is the amount rounded to the next lower dollar determined by dividing the equalized valuation of the state by the state total membership.

(c) For districts operating only high school grades, the amounts in pars. (a) to (bm) shall be multiplied by 3 and rounded to the next lower dollar.

(d) For districts operating only elementary grades, the amounts in pars. (a) to (bm) shall be multiplied by 1.5 and rounded to the next lower dollar.

(e) For a school district created by a consolidation under s. 117.08 or 117.09, in the school year in which the consolidation takes effect and in each of the subsequent 4 school years, the amounts under pars. (a) to (bm) shall be multiplied by 1.1 and rounded to the next lower dollar.

(8) GUARANTEED VALUATION. A school district's primary, secondary and tertiary guaranteed valuations are determined by multiplying the amounts in sub. (7) by the district's membership.

(10) REQUIRED LEVY RATE. (a) The “required levy rate” is the sum of the rates derived in pars. (b) to (d).

(b) The “primary required levy rate” is the primary shared cost divided by the primary guaranteed valuation.

(c) The “secondary required levy rate” is the secondary shared cost divided by the secondary guaranteed valuation.

(d) The “tertiary required levy rate” is the tertiary shared cost divided by the tertiary guaranteed valuation.

History: 1971 c. 125; 1973 c. 61, 90, 190, 333; 1975 c. 39; 1977 c. 29, 178, 418; 1979 c. 34, 221; 1981 c. 20, 317, 385; 1983 a. 27, 212; 1985 a. 29; 1987 a. 27; 1989

a. 31, 114, 309, 336, 359; 1991 a. 39, 269, 315; 1993 a. 16, 437; 1995 a. 27 ss. 4046m to 4064, 9145 (1).

121.08 Payment of state aids; reductions. (1) The state shall pay to the school district the sum of the following amounts:

(a) The amount by which the primary guaranteed valuation exceeds the school district equalized valuation, multiplied by the primary required levy rate.

(b) The amount by which the secondary guaranteed valuation exceeds the school district equalized valuation multiplied by the secondary required levy rate.

(c) The amount by which the tertiary guaranteed valuation exceeds the school district equalized valuation multiplied by the tertiary required levy rate.

(2) The aid computed under sub. (1) shall be reduced by the sum of the amount by which the school district equalized valuation exceeds the secondary guaranteed valuation, multiplied by the secondary required levy rate, and the amount by which the school district equalized valuation exceeds the tertiary guaranteed valuation, multiplied by the tertiary required levy rate. In no case may the aid under this section be less than the amount under sub. (1) (a).

(3) The aid computed under sub. (1) shall be reduced by the amount by which the aid that the school district is receiving under sub. (1) as a result of the number of pupils reported as enrolled in the school district under s. 121.05 (1) (a) 7. exceeds the amount paid by the school district for tuition for those pupils.

History: 1973 c. 90; 1977 c. 29; 1983 a. 509; 1985 a. 29; 1987 a. 27, 399; 1995 a. 27.

121.09 State aid adjustment; redetermination of assessment. (1) If, on or after July 1, 1980, the tax appeals commission or a court makes a final redetermination on the assessment of property subject to taxation under s. 70.995 that is lower than the previous assessment, or if, on or after January 1, 1982, the state board of assessors makes a final redetermination on the assessment of property subject to taxation under s. 70.995 that is lower than the previous assessment, the school board of the school district in which the property is located may, within 4 years after the date of the determination, decision or judgment, file the determination of the state board of assessors, the decision of the tax appeals commission or the judgment of the court with the department, requesting an adjustment in state aid to the school district. If the department determines that the determination, decision or judgment is final and that it has been filed within the 4-year period, the state shall pay to the school district in the subsequent fiscal year, from the appropriation under s. 20.255 (2) (ac), an amount equal to the difference between the state aid computed under s. 121.08 for the school year commencing after the year subject to the valuation recertification, using the school district's equalized valuation as originally certified, and the state aid computed under s. 121.08 for that school year using the school district's equalized valuation as recertified under s. 70.57 (2).

NOTE: Sub. (1) is shown as amended eff. 1–1–96 by 1995 Wis. Act 27. The treatment by Act 27 was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95–2168–OA. Prior to Act 27 it read:
(1) If, on or after July 1, 1980, the tax appeals commission or a court makes a final redetermination on the assessment of property subject to taxation under s. 70.995 that is lower than the previous assessment, or if, on or after January 1, 1982, the state board of assessors makes a final redetermination on the assessment of property subject to taxation under s. 70.995 that is lower than the previous assessment, the school board of the school district in which the property is located may, within 4 years after the date of the determination, decision or judgment, file the determination of the state board of assessors, the decision of the tax appeals commission or the judgment of the court with the state superintendent, requesting an adjustment in state aid to the school district. If the state superintendent determines that the determination, decision or judgment is final and that it has been filed within the 4-year period, the state shall pay to the school district in the subsequent fiscal year, from the appropriation under s. 20.255 (2) (ac), an amount equal to the difference between the state aid computed under s. 121.08 for the school year commencing after the year subject to the valuation recertification, using the school district's equalized valuation as originally certified, and the state aid computed under s. 121.08 for that school year using the school district's equalized valuation as recertified under s. 70.57 (2).

NOTE: Sub. (1) is shown as amended eff. 1–1–96 by 1995 Wis. Act 27. The treatment by Act 27 was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95–2168–OA. Prior to Act 27 it read:

(1) If, on or after July 1, 1980, the tax appeals commission or a court makes a final redetermination on the assessment of property subject to taxation under s. 70.995 that is lower than the previous assessment, or if, on or after January 1, 1982, the state board of assessors makes a final redetermination on the assessment of property subject to taxation under s. 70.995 that is lower than the previous assessment, the school board of the school district in which the property is located may, within 4 years after the date of the determination, decision or judgment, file the determination of the state board of assessors, the decision of the tax appeals commission or the judgment of the court with the state superintendent, requesting an adjustment in state aid to the school district. If the state superintendent determines that the determination, decision or judgment is final and that it has been filed within the 4-year period, the state shall pay to the school district in the subsequent fiscal year, from the appropriation under s. 20.255 (2) (ac), an amount equal to the difference between the state aid computed under s. 121.08 for the school year commencing after the year subject to the valuation recertification, using the school district's equalized valuation as originally certified, and the state aid computed under s. 121.08 for that school year using the school district's equalized valuation as recertified under s. 70.57 (2).

(2) If, on or after May 3, 1984, the state board of assessors, the tax appeals commission or a court makes a final redetermination on the assessment of property subject to taxation under s. 70.995 that is higher than the previous assessment, the department shall notify the school district in which the property is located of the recertification by the department of revenue under s. 70.57 (2). The department shall, in the subsequent fiscal year, withhold from the school district's state aid entitlement under s. 121.08 an amount equal to the difference between the state aid computed under s. 121.08 for the school year commencing after the year subject to the valuation recertification, using the school district's equalized valuation as originally certified, and the state aid computed under s. 121.08 for that school year, using the school district's equalized valuation as recertified under s. 70.57 (2).

NOTE: Sub. (2) is shown as amended eff. 1–1–96 by 1995 Wis. Act 27. The treatment by Act 27 was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95–2168–OA. Prior to Act 27 it read:

(2) If, on or after May 3, 1984, the state board of assessors, the tax appeals commission or a court makes a final redetermination on the assessment of property subject to taxation under s. 70.995 that is higher than the previous assessment, the state superintendent shall notify the school district in which the property is located of the recertification by the department of revenue under s. 70.57 (2). The state superintendent shall, in the subsequent fiscal year, withhold from the school district's state aid entitlement under s. 121.08 an amount equal to the difference between the state aid computed under s. 121.08 for the school year commencing after the year subject to the valuation recertification, using the school district's equalized valuation as originally certified, and the state aid computed under s. 121.08 for that school year, using the school district's equalized valuation as recertified under s. 70.57 (2).

History: 1983 a. 372; 1985 a. 29; 1995 a. 27 s. 9145 (1).

School districts may obtain adjustments in state aid payments whether their equalized valuation is changed either as a result of a reassessment of or a finding of exemption of manufacturing property. 73 Atty. Gen. 119.

121.10 Minimum state aid. (1) In this section:

(a) "Median household income" shall be determined by the 1980 federal decennial census.

(b) "State aid" means the sum of payments provided to a school district under s. 121.08.

(2) From the appropriation under s. 20.255 (2) (bm), the state shall annually pay:

(a) To each school district in which the median household income is less than \$15,000, an amount which, when added to the amount of state aid the school district will receive in the current school year, is equal to an amount determined by multiplying \$300 by the membership.

(c) To each school district in which the median household income is at least \$15,000 but not more than \$25,000 and the property tax levy determined under s. 120.12 (3) in the previous year was above the average property tax levy determined under s. 120.12 (3) in the previous year by all school districts, an amount which, when added to the amount of state aid the school district will receive in the current school year, is equal to an amount determined by multiplying \$300 by the membership.

(3) If a school district is eligible to receive a payment under sub. (2) (a) or (c), the state shall pay the school district an amount determined by multiplying \$400 by the membership instead of the amount determined under sub. (2) (a) or (c) if the school district's property tax levy determined under s. 120.12 (3) in the previous year exceeded an amount equal to 107% of the average property tax levy determined under s. 120.12 (3).

(4) If a school district is ineligible for a payment under sub. (2) or (3), the department shall pay to the school district in that school year, from the appropriation under s. 20.255 (2) (bm), an amount which, when added to the amount of state aid the school district will receive in that school year, is equal to an amount determined by multiplying \$175 by the membership.

NOTE: Sub. (4) is shown as amended eff. 1–1–96 by 1995 Wis. Act 27. The treatment by Act 27 was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95–2168–OA. Prior to Act 27 it read:

(4) If a school district is ineligible for a payment under sub. (2) or (3), the state superintendent shall pay to the school district in that school year, from the appropriation under s. 20.255 (2) (bm), an amount which, when added to the

amount of state aid the school district will receive in that school year, is equal to an amount determined by multiplying \$175 by the membership.

(5) If the appropriation under s. 20.255 (2) (bm) in any fiscal year is insufficient to pay the full amount of aid under this section, state aid payments shall be prorated among the school districts entitled to such aid. Payments under this section in any fiscal year may not exceed the amount in the appropriation under s. 20.255 (2) (bm) in that fiscal year.

(6) Beginning in the 1994–95 school year, aid paid under this section, after any proration under sub. (5), to any school district in which the percentage increase in the ratio of shared cost to school district membership in the preceding school year over that ratio in the 2nd preceding school year exceeded the percentage determined by adding 1% to the rate certified under s. 73.03 (46) shall be reduced by 20%. The aid reductions under this subsection shall be distributed as payments under s. 121.08. In this subsection, “shared cost” has the meaning given in s. 121.07 (6) (a).

(7) No aid may be paid under this section after the 1995–96 school year.

History: 1985 a. 29, 120; 1987 a. 27; 1989 a. 31, 336; 1991 a. 32, 39; 1993 a. 16, 437; 1995 a. 27 ss. 4069, 9145 (1).

121.105 Special adjustment aids. (1) In this section “state aid” means the sum of the payments provided to a school district under this section and ss. 121.08, 121.10, excluding any aid reduction under s. 121.10 (6), 121.85 and 121.86. In the 1993–94 school year, “state aid” includes the payment provided to a school district under s. 16.40 (20), 1991 stats.

(2) (a) 1. a. In the 1993–94 school year, if a school district would receive less than 90% of the state aid for the current school year than it received as state aid in the previous school year, its state aid for the current school year shall be increased to an amount equal to 90% of the state aid received in the previous school year.

b. In the 1994–95 school year, if a school district would receive less than 87.5% of the state aid for the current school year than it received as state aid in the previous school year, its state aid for the current school year shall be increased to an amount equal to 87.5% of the state aid received in the previous school year.

c. Beginning in the 1995–96 school year, if a school district would receive less than 85% of the state aid for the current school year than it received as state aid in the previous school year, its state aid for the current school year shall be increased to an amount equal to 85% of the state aid received in the previous school year.

2. Beginning in the 1993–94 school year, if a school district would receive less in state aid in the current school year than an amount equal to the aid that it received in the previous school year minus \$1,000,000, its state aid for the current school year shall be increased to an amount equal to the state aid that it received in the previous school year minus \$1,000,000.

3. A school district eligible for aid under subd. 1. and 2. shall receive aid under subd. 1. The additional aid shall be paid from the appropriation under s. 20.255 (2) (ac).

(b) A school district is eligible to receive additional aid under par. (a) only if additional aid does not result in a state aid payment greater than the school district’s shared cost.

(3) In the school year in which a school district consolidation takes effect under s. 117.08 or 117.09 and in each of the subsequent 4 school years, the consolidated school district’s state aid shall be an amount that is not less than the aggregate state aid received by the consolidating school districts in the school year prior to the school year in which the consolidation takes effect. The additional state aid shall be paid from the appropriation under s. 20.255 (2) (ac).

History: 1985 a. 29, 251; 1987 a. 27; 1989 a. 31, 114, 336; 1991 a. 39, 269; 1993 a. 16, 437.

121.135 State aid to county handicapped children’s education boards. (1) If, upon receipt of the report under s. 115.84, the department is satisfied that there are children participating in a special education program provided by a county handi-

capped children’s education board, the department shall certify to the department of administration from the appropriation under s. 20.255 (2) (bh) in favor of the county handicapped children’s education board the amount determined under sub. (2), except as provided under sub. (3).

NOTE: Sub. (1) is shown as amended eff. 1–1–96 by 1995 Wis. Act 27. The treatment by Act 27 was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95–2168–OA. Prior to Act 27 it read:

(1) If, upon receipt of the report under s. 115.84, the state superintendent is satisfied that there are children participating in a special education program provided by a county handicapped children’s education board, the superintendent shall certify to the department of administration from the appropriation under s. 20.255 (2) (bh) in favor of the county handicapped children’s education board the amount determined under sub. (2), except as provided under sub. (3).

(2) (a) In this subsection:

1. “Additional general aid” means the amount determined by calculating the percentage of a school district’s shared costs that would be paid under s. 121.08 if its membership included each pupil who is a resident of the school district and solely enrolled in a special education program provided by a county handicapped children’s education board and the school district’s shared costs were increased by the costs of the county handicapped children’s education board program for all pupils participating in the county handicapped children’s education board program who are residents of the school district, and multiplying the costs of the county handicapped children’s education board program by that percentage.

2. “Costs of the county handicapped children’s education board program” means the gross cost of the county handicapped children’s education board program minus all nonduplicative revenues and other financing sources except property taxes and state aid paid under this section in the previous school year.

(c) The state superintendent shall pay the additional general aid to the county handicapped children’s education board. If a school district is eligible for minimum aid under s. 121.10, the state superintendent shall pay to the county handicapped children’s education board the minimum aid amount for which the school district is eligible under s. 121.10 for those pupils enrolled solely in the county handicapped children’s education board program who are residents of the school district.

(3) This section does not apply beginning on the effective date of a resolution adopted under s. 115.86 (9) (c), except that in the school year beginning July 1 of the year prior to the effective date of the resolution, the department shall certify to the department of administration from the appropriation under s. 20.255 (2) (bh) in favor of the county handicapped children’s education board an amount equal to one-half the amount specified under sub. (2) for each pupil enrolled.

NOTE: Sub (3) is shown as amended eff. 1–1–96 by 1995 Wis. Act 27. The treatment by Act 27 was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95–2168–OA. Prior to Act 27 it read:

(3) This section does not apply beginning on the effective date of a resolution adopted under s. 115.86 (9) (c), except that in the school year beginning July 1 of the year prior to the effective date of the resolution, the state superintendent shall certify to the department of administration from the appropriation under s. 20.255 (2) (bh) in favor of the county handicapped children’s education board an amount equal to one-half the amount specified under sub. (2) for each pupil enrolled.

History: 1973 c. 89, 243; 1979 c. 34 s. 2102 (43) (a); 1979 c. 176; 1981 c. 20; 1983 a. 27 ss. 1482g, 1482r, 2202 (42); 1987 a. 27; 1989 a. 336, 359; 1991 a. 39; 1993 a. 16; 1995 a. 27 ss. 4072, 9145 (1).

121.14 State aid for summer classes. (1) State aid shall be paid to each district or county handicapped children’s education board only for those academic summer classes or laboratory periods for which the department has given prior review and approval as to the content of such classes or laboratory periods so as to assure that such classes and laboratory periods are only for necessary academic purposes. Recreational programs and team sports shall not be eligible for aid under this section, and pupils participating in such programs shall not be counted as pupils enrolled under s. 121.004 (5) nor shall costs associated with such programs be included in shared costs under s. 121.07 (6).

NOTE: Sub. (1) is shown as amended eff. 1–1–96 by 1995 Wis. Act 27. The treatment by Act 27 was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95–2168–OA. Prior to Act 27 it read:

(1) State aid shall be paid to each district or county handicapped children's education board only for those academic summer classes or laboratory periods for which the state superintendent has given prior review and approval as to the content of such classes or laboratory periods so as to assure that such classes and laboratory periods are only for necessary academic purposes. Recreational programs and team sports shall not be eligible for aid under this section, and pupils participating in such programs shall not be counted as pupils enrolled under s. 121.004 (5) nor shall costs associated with such programs be included in shared costs under s. 121.07 (6).

(2) (a) State aid for summer classes shall be incorporated into the state aid paid for regular classes under this subchapter.

(b) Annually on or before October 1, the school district clerk or chairperson of the county handicapped children's education board shall file with the department a report stating the summer average daily membership equivalent.

(3) References to county handicapped children's education boards under subs. (1) and (2) (b) do not apply beginning on the effective date of a resolution adopted under s. 115.86 (9) (c).

History: 1973 c. 89, 90, 243, 333; 1975 c. 39; 1977 c. 29; 1983 a. 27; 1983 a. 189 s. 329 (17m); 1995 a. 27 s. 9145 (1).

121.15 Payment of state aid. (1) State aid under s. 121.08 shall be paid to school districts according to the following distribution schedule:

(a) Each school district shall receive 15% of its total aid entitlement in September, 25% of its total aid entitlement in December, 25% of its total aid entitlement in March and 35% of its total aid entitlement in June.

(b) For the September payment, the total aid entitlement for each district shall be estimated based upon the total aid payment in the previous year.

(c) For the payments from December to June, the total aid entitlement for each district shall be computed on the basis of the budget and membership report under s. 121.05.

(e) Payments under this subsection shall be made on the first Monday of the month for the December payment, on the 3rd Monday of the month for the September and June payments and on the 4th Monday of the month for the March payment.

(2) (a) No state aid payments may be made to any district until the annual report under s. 120.18 has been filed with the department.

(b) No state aid payments may be made to any district in the months of November to June until the budget and membership report under s. 121.05 is filed with the department.

(c) If the department notifies a school district that a state aid payment may be withheld under par. (a) or (b), the department shall notify each member of the school board or the school district clerk. If the department notifies the school district clerk, the school district clerk shall promptly distribute a copy of the notice to each member of the school board.

NOTE: Par. (c) is shown as amended eff. 1–1–96 by 1995 Wis. Act 27. The treatment by Act 27 was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95–2168–OA. Prior to Act 27 it read:

(c) If the state superintendent notifies a school district that a state aid payment may be withheld under par. (a) or (b), he or she shall notify each member of the school board or the school district clerk. If the state superintendent notifies the school district clerk, the school district clerk shall promptly distribute a copy of the notice to each member of the school board.

(3m) (a) In this subsection:

1. "Partial school revenues" means the sum of state school aids and property taxes levied for school districts.

2. "State school aids" means those aids appropriated under s. 20.255 (2), other than s. 20.255 (2) (fu), (k) and (m), and under s. 20.505 (4) (er).

(b) By June 15, 1996, and annually by June 15 thereafter, the department, the department of administration and the legislative fiscal bureau shall jointly certify to the joint committee on finance an estimate of the amount necessary to appropriate under s. 20.255 (2) (ac) in the following school year to ensure that the sum of state

school aids and the school levy tax credit under s. 79.10 (4) equals 66.7% of partial school revenues.

(c) By June 30, 1996, and annually by June 30 thereafter, the joint committee on finance shall determine the amount appropriated under s. 20.255 (2) (ac) in the following school year.

(4) On July 1 and October 15, using the most accurate data available, the department shall provide the department of revenue and each school district with an estimate of the total amount of state aid, as defined in s. 121.90 (2), the school district will receive in the current school year. On October 15, using the most accurate data available, the department shall calculate the total amount of state aid, as defined in s. 121.90 (2), that each school district will receive in the current school year. Any adjustments to that calculation shall be made by increasing or decreasing the payment made in September of the following school year.

NOTE: Sub. (4) is shown as amended eff. 1–1–96 by 1995 Wis. Act 27. The treatment by Act 27 was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95–2168–OA. Prior to Act 27 it read:

(4) On July 1 and October 15, using the most accurate data available, the state superintendent shall provide the department of revenue and each school district with an estimate of the total amount of state aid, as defined in s. 121.90 (2), the school district will receive in the current school year. On October 15, using the most accurate data available, the state superintendent shall calculate the total amount of state aid, as defined in s. 121.90 (2), that each school district will receive in the current school year. Any adjustments to that calculation shall be made by increasing or decreasing the payment made in September of the following school year.

History: 1977 c. 29 s. 1098; 1977 c. 273; Stats. 1977 s. 121.15; 1979 c. 34; 1985 a. 29, 120; 1987 a. 27; 1989 a. 207; 1993 a. 16, 437; 1995 a. 27 ss. 4073 to 4075m, 9145 (1).

121.17 Use of federal revenue sharing funds. It is the intent of the legislature that school districts receiving federal revenue sharing funds through the state under this subchapter shall utilize these funds in compliance with the federal revenue sharing requirements as defined in the state and local fiscal assistance act of 1972 (P.L. 92–512), as amended by P.L. 94–488. The department shall assure compliance with this section.

NOTE: This section is shown as amended eff. 1–1–96 by 1995 Wis. Act 27. The treatment by Act 27 was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95–2168–OA. Prior to Act 27 it read:

121.17 Use of federal revenue sharing funds. It is the intent of the legislature that school districts receiving federal revenue sharing funds through the state under this subchapter shall utilize these funds in compliance with the federal revenue sharing requirements as defined in the state and local fiscal assistance act of 1972 (P.L. 92–512), as amended by P.L. 94–488. The department of public instruction shall assure compliance with this section.

History: 1973 c. 90; 1977 c. 29 s. 1101; Stats. 1977 s. 121.17; 1995 a. 27.

121.23 Payment of aids in school district labor disputes. (1) In the event that the department finds that school is not held, or educational standards are not maintained in accordance with s. 121.02 (1) (f) as the result of a strike by school district employees, make-up days are authorized to be scheduled but no make-up days are required.

NOTE: Sub. (1) is shown as amended eff. 1–1–96 by 1995 Wis. Act 27. The treatment by Act 27 was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95–2168–OA. Prior to Act 27 it read:

(1) In the event that the state superintendent finds that school is not held, or educational standards are not maintained in accordance with s. 121.02 (1) (f) as the result of a strike by school district employees, make-up days are authorized to be scheduled but no make-up days are required.

(2) If a school district holds less than 180 days of school as the result of a strike by school district employees, for the purposes of computing general aid, the department shall compute the school district's primary and secondary ceiling costs per member in accordance with the procedure specified in pars. (a) to (e). In making the calculation, the department shall:

NOTE: Sub. (2) (intro.) is shown as amended by 1995 Wis. Act 27. The treatment by Act 27, s. 9145 (1), was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95–2168–OA. Par. (m) as not affected by Act 27 s. 9145 (1) reads as follows:

(2) If a school district holds less than 180 days of school as the result of a strike by school district employees, for the purposes of computing general aid, the state superintendent shall compute the school district's primary and secondary ceiling costs per member in accordance with the procedure specified in pars. (a) to (e). In making the calculation, the state superintendent shall:

- (a) Determine the amount of shared cost not incurred by the school district because of the strike.
- (b) Determine the amount of shared cost that the school district would have incurred had the strike not occurred.
- (c) Divide the amount determined under par. (a) by the amount determined under par. (b).
- (d) Multiply the quotient determined under par. (c) by the amount determined under s. 121.07 (6) (b).
- (e) Subtract the product determined under par. (d) from the amount determined under s. 121.07 (6) (b).
- History:** 1977 c. 178; 1979 c. 221 s. 2202 (43); 1995 a. 27 ss. 4077, 9145 (1).

SUBCHAPTER III

DRIVER EDUCATION AID AND FEES

121.41 Driver education programs. (1) STATE AID. To promote a uniformly effective driver education program among high school and technical college pupils, each school district operating high school grades, each county handicapped children's education board which provides the substantial equivalent of a high school education and each technical college district shall receive \$100 for each pupil of high school age who completes a course in driver education approved by the department under s. 115.28 (11), but in no case may the state aid exceed the actual cost of instruction. If the appropriation under s. 20.255 (2) (r) is inadequate in any year to provide \$100 per pupil, the state aid shall be prorated after the appropriation for administration is deducted. Such state aid shall be paid at the same time as the state aid under s. 121.08 is paid.

(2) FEES. A school board may establish and collect reasonable fees for any driver education program or part of a program which is neither required for nor credited toward graduation. The school board may waive any fee established under this subsection for any indigent pupil.

History: 1971 c. 125 s. 522 (1); 1971 c. 154, 211; 1973 c. 89, 90, 309, 336; 1977 c. 29 s. 1096; Stats. 1977 s. 121.41; 1983 a. 22; 1983 a. 27 s. 2202 (42); 1985 a. 29, 218; 1991 a. 269; 1993 a. 399, 455, 491.

SUBCHAPTER IV

TRANSPORTATION AID

121.51 Definitions. In this subchapter:

(1) "Attendance area" is the geographic area designated by the governing body of a private school as the area from which its pupils attend and approved by the school board of the district in which the private school is located. If the private school and the school board cannot agree on the attendance area, the department shall, upon the request of the private school and the board, make a final determination of the attendance area. The attendance areas of private schools affiliated with the same religious denomination shall not overlap unless one school limits its enrollment to pupils of the same sex and the other school limits its enrollment to pupils of the opposite sex or admits pupils of both sexes.

NOTE: Sub. (1) is shown as amended eff. 1-1-96 by 1995 Wis. Act 27. The treatment by Act 27 was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95-2168-OA. Prior to Act 27 it read:

(1) "Attendance area" is the geographic area designated by the governing body of a private school as the area from which its pupils attend and approved by the school board of the district in which the private school is located. If the private school and the school board cannot agree on the attendance area, the state superintendent shall, upon the request of the private school and the board, make a final determination of the attendance area. The attendance areas of private schools affiliated with the same religious denomination shall not overlap unless one school limits its enrollment to pupils of the same sex and the other school limits its enrollment to pupils of the opposite sex or admits pupils of both sexes.

(3) "School board" has the meaning designated in s. 115.001 (7) and includes any governmental agency transporting children to and from public schools.

(4) "School bus" has the meaning designated in s. 340.01 (56).
History: 1975 c. 120; 1983 a. 189 ss. 185, 329 (17); 1983 a. 512; 1989 a. 31; 1995 a. 27 s. 9145 (1).

"The attendance areas of private schools affiliated with the same religious denomination shall not overlap," is not construed as mere surplusage, for although it adds no special restrictive ban on overlapping in that such restriction is inherent in the whole concept of "attendance areas," it makes the phrase "affiliated with the same religious denomination" the test of affiliation in a single school system rather than operation by a single agency or set of trustees or religious order within a particular religious denomination. State ex rel. Vanko v. Kahl, 52 W (2d) 206, 188 NW (2d) 460.

See note to art. I, sec. 18, citing *Holy Trinity Community School v. Kahl*, 82 W (2d) 139, 262 NW (2d) 210.

First amendment-based attacks on Wisconsin "attendance area" statutes. 1980 WLR 409.

121.52 Vehicle, operator and driver requirements. (1)

(a) Rules governing the design, construction, inspection and operation of school buses adopted by the secretary of transportation under s. 110.06 (2) shall by reference be made part of any contract for the transportation of pupils.

(b) The school board may adopt additional rules, not inconsistent with law or with rules of the secretary of transportation or the department, for the protection of the pupils or to govern the conduct of the person in charge of the motor vehicle used for transportation of pupils for compensation.

NOTE: Par. (b) is shown as amended eff. 1-1-96 by 1995 Wis. Act 27. The treatment by Act 27 was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95-2168-OA. Prior to Act 27 it read:

(b) The school board may adopt additional rules, not inconsistent with law or with rules of the secretary of transportation or the state superintendent, for the protection of the pupils or to govern the conduct of the person in charge of the motor vehicle used for transportation of pupils for compensation.

(2) (a) All drivers of motor vehicles owned by the school district and used for the transportation of pupils shall be under written contract with the school board of the district.

(b) The owner or lessee of all privately owned motor vehicles transporting pupils for compensation shall be under written contract with the school board of the district for which such transportation is provided.

(c) The form of contract shall be prescribed by the department and shall provide that all parties to the contract are subject at all times to rules adopted by the secretary of transportation under s. 110.06 (2) and by the department.

(3) (a) If the contract is made under sub. (2) (b), the contract shall provide that the owner or lessee require his or her bus drivers, as a condition of employment, to take a physical examination, including a chest X-ray or tuberculin test, and to submit the physical examination report to the school board. If the reaction to the tuberculin test is positive, a chest X-ray shall be required. Freedom from tuberculosis in a communicable form is a condition of employment as a bus driver. Additional physical examinations shall be required thereafter at intervals determined by the school board.

(b) The contract shall provide that a physical examination report may be submitted on forms prescribed by the federal authority regulating motor carriers or the department and that a copy of a physical examination report obtained for other purposes within one year of the date of the contract may be substituted for the examination, if the report contains substantially the same information required by the department.

(c) Such physical examinations, chest X-rays or tuberculin tests shall not be required of a bus driver who files with the school board an affidavit setting forth that the bus driver depends exclusively upon prayer or spiritual means for healing in accordance with the teachings of a bona fide religious sect, denomination or organization and that the bus driver is to the best of the bus driver's knowledge and belief in good health and that the bus driver claims exemption from health examination on these grounds. Notwithstanding the filing of such affidavit, if there is reasonable cause to believe that the bus driver is suffering from an illness detrimental to the health of the pupils, the school board may require a health examination of the bus driver sufficient to indicate whether or not

the bus driver is suffering from such an illness. No bus driver may be discriminated against by reason of filing such affidavit.

(4) The use of any motor vehicle to transport pupils shall be discontinued upon receipt of an order signed by the secretary or the secretary of transportation ordering such discontinuance. Personnel under the secretary or the secretary of transportation may ride any school bus at any time for the purpose of inspection.

NOTE: Sub. (4) is shown as amended eff. 1–1–96 by 1995 Wis. Act 27. The treatment by Act 27 was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95–2168–OA. Prior to Act 27 it read:

(4) The use of any motor vehicle to transport pupils shall be discontinued upon receipt of an order signed by the state superintendent or the secretary of transportation ordering such discontinuance. Personnel under the state superintendent or the secretary of transportation may ride any school bus at any time for the purpose of inspection.

History: 1977 c. 29 s. 1654 (7) (d); 1985 a. 218; 1993 a. 492; 1995 a. 27 ss. 4079, 9145 (1).

121.53 School bus insurance. (1) No motor vehicle may be used as a school bus unless a policy of bodily injury and property damage liability insurance, issued by an insurer authorized to transact business in this state, is maintained thereon. The policy shall provide property damage liability coverage with a limit of not less than \$10,000. The policy also shall provide bodily injury liability coverage with limits of not less than \$75,000 for each person and, subject to such limit for each person, total limits as follows:

(a) \$150,000 for each accident for each such motor vehicle having a seating capacity of 7 passengers or less.

(b) \$200,000 for each accident for each such motor vehicle having a seating capacity of 8 to 15 passengers.

(c) \$250,000 for each accident for each such motor vehicle having a seating capacity of 16 to 24 passengers.

(d) \$375,000 for each accident for each such motor vehicle having a seating capacity of 25 to 36 passengers.

(e) \$1,000,000 for each accident for each such motor vehicle having a seating capacity of 37 or more passengers.

(2) The policy under this section shall cover the transportation of pupils, their parents or guardians, authorized chaperones, school district officers, faculty and employees and school doctors, dentists and nurses:

(a) To and from the school or school district which operates the school bus or contracts for its operation.

(b) In connection with any extracurricular school activity authorized by and made in compliance with s. 121.54 (7).

(3) An insurer issuing a policy under this section may exclude coverage for public or livery use of the school bus, but any such exclusion does not apply:

(a) When the school bus, while regularly used as such, also is used to transport pupils of another public or private school, whether or not a charge is made for such transportation.

(b) When used in accordance with sub. (2), whether or not any person lawfully transported is required to pay a charge therefor.

(c) When the school bus is used as specified in s. 340.01 (56) (am) for the purpose of transporting elderly or disabled persons in connection with a transportation assistance program for such persons.

(4) Every school board shall require that there be filed with it and with the department of transportation a certificate of insurance showing that an insurance policy has been procured and is in effect which covers the owner and operator of the school bus and the school board or shall procure an insurance policy and file such certificate with the department of transportation. Unless such certificate is on file with the department of transportation, no registration plates for a school bus may be issued by the department of transportation. No such policy may be terminated prior to its expiration or canceled for any reason, unless a notice thereof is filed with the department of transportation and with the school board by the insurer at least 10 days prior to the date of termination or cancellation. The department of transportation shall revoke the registration of a school bus on which the policy has been termi-

nated or canceled, effective on the date of termination or cancellation.

(5) Subsections (1) to (4) do not apply to:

(a) A motor vehicle owned or operated by a parent or guardian transporting only the parent's or guardian's own children, whether or not any contract is made with or compensation paid to the parent or guardian for such transportation by a school board.

(b) A motor vehicle operated by a common carrier certificated under ch. 194, where such motor vehicle is used under contract pursuant to this subchapter, if the common carrier has complied with s. 194.41 or 194.42.

(c) A taxicab regulated by a municipal ordinance under s. 349.24 when used to transport pupils.

(6) Within 10 days after its occurrence, every accident involving a motor vehicle while providing transportation under this subchapter shall be reported to the appropriate school board and promptly by the school board to the department on forms provided by the department.

NOTE: Sub. (6) is shown as amended eff. 1–1–96 by 1995 Wis. Act 27. The treatment by Act 27 was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95–2168–OA. Prior to Act 27 it read:

(6) Within 10 days after its occurrence, every accident involving a motor vehicle while providing transportation under this subchapter shall be reported to the appropriate school board and promptly by the school board to the state superintendent on forms provided by the state superintendent.

History: 1975 c. 60; 1977 c. 29 s. 1654 (7) (b); 1979 c. 281; 1981 c. 25; 1985 a. 287; 1991 a. 239; 1993 a. 492; 1995 a. 27 s. 9145 (1).

121.54 Transportation by school districts. (1) CITY OPTION. (a) Subsections (2) and (6) and s. 121.57 do not apply to pupils who reside in a school district that contains all or part of a city unless the school they attend is located outside the city but within the boundaries of the school district.

(b) If a school district elects under sub. (2) (c) to provide transportation for the pupils under par. (a), state aid shall be paid in accordance with s. 121.58, and there shall be reasonable uniformity in the transportation furnished to the pupils, whether they attend public or private schools.

(c) Paragraph (a) does not apply to pupils who reside in a school district that contains all or part of a 1st, 2nd or 3rd class city with a population exceeding 40,000 unless transportation for the pupils is available through a common carrier of passengers operating under s. 85.20 or ch. 194.

(2) GENERAL TRANSPORTATION. (a) Except as provided in sub. (1), every school board shall provide transportation to and from public school for all pupils who reside in the school district 2 miles or more from the nearest public school they are entitled to attend.

(am) In lieu of transporting a pupil who is eligible for transportation under par. (a) to and from his or her residence, a school district may transport the pupil to or from, or both, a before- and after-school day care program under s. 120.125, a day care program under s. 120.13 (14) or any other day care program, family day care home or child care provider.

(b) 1. Except as provided in sub. (1) or otherwise provided in this subsection, the school board of each district operating high school grades shall provide transportation to and from the school a pupil attends for each pupil residing in the school district who attends any elementary grade, including kindergarten, or high school grade at a private school located 2 miles or more from the pupil's residence, if such private school is a school within whose attendance area the pupil resides and is situated within the school district or not more than 5 miles beyond the boundaries of the school district measured along the usually traveled route.

2. In lieu of transporting students under subd. 1. and paying for transportation under sub. (8) (b), an underlying elementary school district of a union high school district may elect, by resolution adopted at its annual or special meeting, to transport elementary school children who reside within the underlying district and qualify for transportation under subd. 1., in vehicles owned, operated or contracted for by the district. Once adopted, such a resolution may be repealed only upon one year's notice to the board of

the union high school district of which the underlying district is a part. An elementary school district shall notify the union high school district of any action under this paragraph no later than June 15 preceding the school year in which the elementary school district's action takes effect.

3. By April 1, 1986, and annually thereafter by that date, each private school shall submit its proposed attendance area for the ensuing school year to the school board of each school district having territory within the proposed attendance area. If a proposal is not submitted by April 1, the existing attendance area shall remain in effect for the ensuing school year.

4. No later than May 15 in each year, each private school shall notify each school board of the names, grade levels and locations of all pupils, if any, eligible to have transportation provided by such school board under this paragraph and planning to attend such private school during the forthcoming school term. The school board may extend the notification deadline.

(c) An annual or special meeting of a common or union high school district, or the school board of a unified school district, may elect to provide transportation for pupils who are not required to be transported under this section. Transportation may be provided for all or some of the pupils who reside in the school district to and from the public school they are entitled to attend or the private school, within or outside the school district, within whose attendance area they reside. If transportation is provided for less than all such pupils there shall be reasonable uniformity in the minimum distance that pupils attending public and private schools will be transported. Except for elementary school districts electing to furnish transportation under par. (b) 2., this paragraph does not permit a school district operating only elementary grades to provide transportation for pupils attending private schools.

(d) A school board may provide transportation for teachers to and from public school, subject to the same controls and limitations as apply to the transportation of pupils.

(3) TRANSPORTATION FOR CHILDREN WITH EXCEPTIONAL EDUCATIONAL NEEDS. Every school board shall provide transportation for children with exceptional educational needs, as defined in s. 115.76 (3), to any public or private elementary or high school, to the Wisconsin school for the visually handicapped or the Wisconsin school for the deaf or to any special educational program for children with exceptional educational needs sponsored by a state tax-supported institution of higher education, regardless of distance, if the request for such transportation is approved by the department. Approval shall be based on whether or not the child can walk to school with safety and comfort. Section 121.53 shall apply to transportation provided under this subsection.

NOTE: Sub. (3) is shown as amended eff. 1–1–96 by 1995 Wis. Act 27. The treatment by Act 27 was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95–2168–OA. Prior to Act 27 it read:

(3) TRANSPORTATION FOR CHILDREN WITH EXCEPTIONAL EDUCATIONAL NEEDS. Every school board shall provide transportation for children with exceptional educational needs, as defined in s. 115.76 (3), to any public or private elementary or high school, to the Wisconsin school for the visually handicapped or the Wisconsin school for the deaf or to any special educational program for children with exceptional educational needs sponsored by a state tax-supported institution of higher education, regardless of distance, if the request for such transportation is approved by the state superintendent. Approval shall be based on whether or not the child can walk to school with safety and comfort. Section 121.53 shall apply to transportation provided under this subsection.

(4) SUMMER CLASS TRANSPORTATION. (a) A school board may provide transportation for pupils residing in the school district and attending summer classes. If the school board provides transportation for less than all pupils, there shall be reasonable uniformity in the minimum and maximum distances pupils are transported.

(b) A school board, a county handicapped children's education board or a cooperative educational service agency may provide transportation regardless of distance for children with exceptional educational needs who attend a summer special education program under s. 115.83 (4), if a request for such transportation is approved by the department. Approval shall be based on whether or not the child can walk to school with safety and comfort. Sec-

tion 121.53 shall apply to transportation provided under this paragraph.

NOTE: Par. (b) is shown as amended eff. 1–1–96 by 1995 Wis. Act 27. The treatment by Act 27 was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95–2168–OA. Prior to Act 27 it read:

(b) A school board, a county handicapped children's education board or a cooperative educational service agency may provide transportation regardless of distance for children with exceptional educational needs who attend a summer special education program under s. 115.83 (4), if a request for such transportation is approved by the state superintendent. Approval shall be based on whether or not the child can walk to school with safety and comfort. Section 121.53 shall apply to transportation provided under this paragraph.

(5) TRANSPORTATION TO TECHNICAL COLLEGES. The school board of a district operating high school grades may provide for the transportation or board and lodging of residents of the school district attending technical colleges outside the school district who are not high school graduates, are less than 20 years of age and attend such colleges full time. The school board of such a district may also provide transportation for residents of the district participating in vocational education programs organized cooperatively between school districts under s. 66.30. The school district shall be paid state aid for such transportation or board and lodging in accordance with s. 121.58. This subsection does not apply if the distance between a pupil's home and the technical college along the usually traveled public highway is more than 15 miles, unless the pupil resides on an approved bus route or board and lodging are provided.

(6) TRANSPORTATION IN SPECIAL CASES. The school board of a district operating high school grades which, under s. 121.78 (2) (a), must permit a pupil to attend high school outside the school district shall provide transportation for such pupil if the pupil resides 2 or more miles from the high school that the pupil attends.

(7) TRANSPORTATION FOR EXTRACURRICULAR ACTIVITIES. (a) A school board may provide transportation for pupils attending public or private schools, their parents or guardians, authorized chaperones, school officers, faculty and employes and school doctors, dentists and nurses in connection with any extracurricular activity of the public or private school, such as a school athletic contest, school game, after school practice, late activity, school outing or school field trip or any other similar trip when:

1. A school bus or motor bus or a motor vehicle under s. 121.555 (1) (a) is used and such transportation is under the immediate supervision of a competent adult.

2. A school operated by the school district or the private school has an actual interest in the safety and welfare of the children transported to the activity;

4. The school principal or other person with comparable authority authorizes such use.

(b) 1. If transportation is provided to pupils and other persons in connection with any extracurricular activity of a public school under par. (a), the school board may make a charge for such transportation, to be paid by the persons transported, sufficient to reimburse it for the cost of providing the transportation. If transportation is provided to pupils and other persons in connection with any extracurricular activity of a private school under par. (a), the school board shall make a charge for such transportation, to be paid by the private school or the persons transported, sufficient to reimburse it for the cost of providing the transportation.

2. The school board may contract under s. 121.52 (2) (b) for transportation authorized under par. (a) for pupils attending public schools. The school board may authorize a charge for the transportation, to be paid by the persons transported, sufficient to make reimbursement for the cost of providing the transportation.

(8) PAYMENT OF TRANSPORTATION COSTS. (a) The cost of providing transportation for pupils under subs. (1) to (6) and s. 121.57 shall be paid by the school district in which they reside, and no part of such cost may be charged to the pupils or their parents or guardians.

(b) At the end of the school term, every union high school district shall submit to each of its underlying school districts operating only elementary grades a certified statement of the actual cost

for the school year, less the amount to be paid for such pupils for that school year under s. 121.58 (2), of transporting the private school pupils residing in the underlying school district under sub. (2) (b). On or before June 30 in each year each underlying school district shall reimburse the union high school district for the net cost of transporting its resident private school pupils as so reported in the statement.

(9) TRANSPORTATION IN AREAS OF UNUSUAL HAZARDS. (a) In school districts in which unusual hazards exist for pupils in walking to and from the school where they are enrolled, the school board shall develop a plan which shall show by map and explanation the nature of the unusual hazards to pupil travel and propose a plan of transportation if such transportation is necessary, which will provide proper safeguards for the school attendance of such pupils. Copies of the plan shall be filed with the sheriff of the county in which the principal office of the school district is located. The sheriff shall review the plan and may make suggestions for revision deemed appropriate. The sheriff shall investigate the site and plan and make a determination as to whether unusual hazards exist which cannot be corrected by local government and shall report the findings in writing to the department and the school board concerned. Within 60, but not less than 30, days from the day on which the department receives the sheriff's report, the department shall determine whether unusual hazards to pupil travel exist and whether the plan provides proper safeguards for such pupils. If the department makes findings which support the plan and the determination that unusual hazards exist which seriously jeopardize the safety of the pupils in their travel to and from school, the school board shall put the plan into effect and state aid shall be paid under s. 121.58 (2) (c) for any transportation of pupils under this subsection. Any city, village or town may reimburse, in whole or in part, a school district for costs incurred in providing transportation under this subsection for pupils who reside in the city, village or town.

NOTE: Par. (a) is shown as amended eff. 1–1–96 by 1995 Wis. Act 27. The treatment by Act 27 was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95–2168–OA. Prior to Act 27 it read:

(a) In school districts in which unusual hazards exist for pupils in walking to and from the school where they are enrolled, the school board shall develop a plan which shall show by map and explanation the nature of the unusual hazards to pupil travel and propose a plan of transportation if such transportation is necessary, which will provide proper safeguards for the school attendance of such pupils. Copies of the plan shall be filed with the sheriff of the county in which the principal office of the school district is located. The sheriff shall review the plan and may make suggestions for revision deemed appropriate. The sheriff shall investigate the site and plan and make a determination as to whether unusual hazards exist which cannot be corrected by local government and shall report the findings in writing to the state superintendent and the school board concerned. Within 60, but not less than 30, days from the day on which the state superintendent receives the sheriff's report, the state superintendent shall determine whether unusual hazards to pupil travel exist and whether the plan provides proper safeguards for such pupils. If the state superintendent makes findings which support the plan and the determination that unusual hazards exist which seriously jeopardize the safety of the pupils in their travel to and from school, the school board shall put the plan into effect and state aid shall be paid under s. 121.58 (2) (c) for any transportation of pupils under this subsection. Any city, village or town may reimburse, in whole or in part, a school district for costs incurred in providing transportation under this subsection for pupils who reside in the city, village or town.

(am) Any person aggrieved by the failure of a school board to file a plan with the sheriff as provided in par. (a) may notify the school board in writing that an area of unusual hazard exists. The school board shall reply to the aggrieved person in writing within 30 days of receipt of the aggrieved person's notice. The school board shall send a copy of the board's reply to the sheriff of the county in which the principal office of the school district is located and to the department. Upon receipt of the school board's reply, the aggrieved person may request a hearing before the department for a determination as to whether an area of unusual hazard exists. If the department determines that an area of unusual hazard exists, the department shall direct the school board to proceed as provided in par. (a).

NOTE: Par. (am) is shown as amended eff. 1–1–96 by 1995 Wis. Act 27. The treatment by Act 27 was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95–2168–OA. Prior to Act 27 it read:

(am) Any person aggrieved by the failure of a school board to file a plan with the sheriff as provided in par. (a) may notify the school board in writing that an area of unusual hazard exists. The school board shall reply to the aggrieved person in writing within 30 days of receipt of the aggrieved person's notice. The school board shall send a copy of the board's reply to the sheriff of the county in which the principal office of the school district is located and to the state superintendent. Upon receipt of the school board's reply, the aggrieved person may request a hearing before the state superintendent for a determination as to whether an area of unusual hazard exists. If the state superintendent determines that an area of unusual hazard exists, the state superintendent shall direct the school board to proceed as provided in par. (a).

(b) Within 30 days after the sheriff's report is received by the department, any aggrieved person may request a hearing before the department on the determination by the sheriff and on the plan. After such hearing, the department shall proceed as provided in par. (a).

NOTE: Par. (b) is shown as amended eff. 1–1–96 by 1995 Wis. Act 27. The treatment by Act 27 was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95–2168–OA. Prior to Act 27 it read:

(b) Within 30 days after the sheriff's report is received by the state superintendent, any aggrieved person may request a hearing before the state superintendent on the determination by the sheriff and on the plan. After such hearing, the state superintendent shall proceed as provided in par. (a).

(c) The department and the department of transportation shall establish a definition of "unusual hazards" and "area of unusual hazards" for the implementation of this subsection. Such definition shall be promulgated, as a rule, by the department.

NOTE: Par. (c) is shown as amended eff. 1–1–96 by 1995 Wis. Act 27. The treatment by Act 27 was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95–2168–OA. Prior to Act 27 it read:

(c) The state superintendent and the department of transportation shall establish a definition of "unusual hazards" and "area of unusual hazards" for the implementation of this subsection. Such definition shall be promulgated, as a rule, by the state superintendent.

History: 1971 c. 162; 1973 c. 89, 107, 333; 1975 c. 60, 392, 421; 1977 c. 227, 252, 418; 1981 c. 20 s. 2202 (51) (e); 1983 a. 27, 175; 1985 a. 29 s. 3202 (43); 1985 a. 218, 225, 240; 1993 a. 399, 492; 1995 a. 27 s. 9145 (1); 1995 a. 439.

Sections 121.51 (4) and 121.54 (2) (b) 1 as enacted in 1969 are constitutional. State ex rel. Vanko v. Kahl, 52 W (2d) 206, 188 NW (2d) 460.

Exceptions to the mandatory provision of transportation should be narrowly construed. The exception for children who "reside in cities" should be confined to its common and approved usage. *Morrisette v. DeZonia*, 63 W (2d) 429, 217 NW (2d) 377.

Although private school was only 127 feet beyond 5–mile limit of (2) (b) 1., statutory construction is not available to extend such limit. *Young v. Bd. of Ed., Jr. Dist. No. 10*, 74 W (2d) 144, 246 NW (2d) 230.

Refusal of board to transport parochial pupils during public school vacation violated (2) (b) 1. *Hahner v. Board of Ed. Wisconsin Rapids*, 89 W (2d) 180, 278 NW (2d) 474 (Ct. App. 1979).

Common carrier passenger service need not be available to all city pupils for school board to possess option under (1). "Reasonable uniformity" requirement was directed at distance pupils are transported, not at means of transportation chosen. *St. John Vianney Sch. v. Janesville Ed. Bd.* 114 W (2d) 140, 336 NW (2d) 387 (Ct. App. 1983).

Transportation must be on a reasonably uniform basis to all children attending either public or private schools. 61 Atty. Gen. 240.

City school busing policies adopted pursuant to (1) and (2) (b) 1. were without rational basis and violated the equal protection rights of city resident private school students who resided more than 2 miles from school but were denied transportation solely because the school was located 400 feet outside the city and school district boundaries. *Deutsch v. Teel*, 400 F Supp. 598.

Sub. (2) (b) 1. does not deny equal protection to students attending parochial school beyond 5–mile limit. *O'Connell v. Kniskern*, 484 F Supp. 896 (1980).

121.545 Additional transportation. (1) The parent or guardian of a pupil who attends a public or private school and who is not required to be transported under s. 121.54 may contract with the school board of the district for transportation under this subsection. The school board of the district may provide transportation under this subsection to a pupil not required to be transported under s. 121.54, if requested to do so by the parent or guardian of the pupil and if the parent or guardian agrees to pay to the school board a fee sufficient to reimburse the board for the costs incurred in providing such transportation. State aid shall not be provided for transportation under this subsection.

(2) A school board may provide transportation for children residing in the school district whom the school district is not required to transport under s. 121.54 to or from, or both, a before–and after–school day care program under s. 120.125, a prekindergarten class under s. 120.13 (13), a day care program under s. 120.13 (14) or any other day care program, family day care home,

child care provider or prekindergarten class. The school board may charge a fee for the cost of providing such transportation. The school board may waive the fee or any portion of the fee for any person who is unable to pay the fee. State aid shall not be provided for transportation under this subsection.

History: 1979 c. 221; 1991 a. 39; 1995 a. 439.

121.55 Methods of providing transportation.

(1) School boards may provide transportation by any of the following methods:

(a) By contract with a common carrier, a taxi company or other parties.

(b) By contract with the parent or guardian of the pupil to be transported. If the school board and the parent or guardian cannot agree upon the amount of compensation, the department shall determine the amount of compensation to be designated in the contract.

(c) By contract with another school board, board of control of a cooperative educational service agency or the proper officials of any private school or private school association.

(d) By contract between 2 or more school boards and an individual or a common carrier.

(e) By the purchase and operation of a motor vehicle.

(3) If the estimated cost of transporting a pupil under s. 121.54 (2) (b) 1. is more than 1.5 times the school district's average cost per pupil for bus transportation in the previous year, exclusive of transportation for kindergarten pupils during the noon hour and for handicapped pupils, the school board may fulfill its obligation to transport a pupil under s. 121.54 (2) (b) 1. by offering to contract with the parent or guardian of the pupil. The contract shall provide for an annual payment for each pupil of not less than \$5 times the distance in miles between the pupil's residence and the private school he or she attends, or the school district's average cost per pupil for bus transportation in the previous year exclusive of transportation for kindergarten pupils during the noon hour and for handicapped pupils, whichever is greater, but the payment shall not exceed the actual cost nor may the aids paid under s. 121.58 (2) (a) for the pupil exceed the cost thereof. A school board which intends to offer a contract under this subsection shall notify the parent or guardian of the private school pupil of its intention at least 30 days before the commencement of the school term of the public school district.

History: 1979 c. 34, 221; 1981 c. 263; 1983 a. 264.

121.555 Alternative methods of providing transportation. (1) A school board or the governing body of a private school may provide pupil transportation services by the following alternative methods:

(a) A motor vehicle transporting 9 or less passengers in addition to the operator.

(b) A motor vehicle transporting 10 or more passengers in addition to the operator and used temporarily to provide transportation for purposes specified under s. 340.01 (56) (a) when the school board or the governing body requests the secretary of transportation to determine that an emergency exists because no regular transportation is available. The secretary of transportation shall approve or deny the request in writing. Any authorization granted under this paragraph shall specify the purpose and need for the emergency transportation service.

(2) The school board or governing body of a private school shall determine that any motor vehicle used under sub. (1) complies with the following conditions:

(a) *Insurance.* If the vehicle is owned or leased by a school or a school bus contractor, or is a vehicle authorized under sub. (1) (b), it shall comply with s. 121.53. If the vehicle is transporting 9 or less persons in addition to the operator and is not owned or leased by a school or by a school bus contractor, it shall be insured by a policy providing property damage coverage with a limit of not less than \$10,000 and bodily injury liability coverage with limits of not less than \$25,000 for each person, and, subject to the

limit for each person, a total limit of not less than \$50,000 for each accident.

(b) *Inspection.* If the vehicle is owned or leased by a school or a school bus contractor or is operated by a school district employe, it shall be inspected annually for compliance with the requirements of s. 110.075, ch. 347, and the rules of the department of transportation. The owner or lessee of the vehicle is responsible for the annual inspection.

(c) *Operator requirements.* The operator:

1. Shall possess a valid Wisconsin operator's license or a valid operator's license issued by another jurisdiction, as defined in s. 340.01 (41m), or a valid commercial driver license issued by Mexico.

2. Shall be at least 18 years of age.

3. Shall have sufficient use of both hands and the foot normally employed to operate the foot brake and foot accelerator. The department of transportation may require substantiation of such use by a driving examination conducted by the department or by a medical opinion.

4. Shall submit at least once every 3 years to the school a medical opinion in such form as the school may prescribe that the operator is not afflicted with or suffering from any mental or physical disability or disease such as to prevent the operator from exercising reasonable control over a motor vehicle. The examination report prescribed in s. 118.25 (2) and (4) may be used to satisfy this requirement. This subdivision applies only if the vehicle used under sub. (1) is owned or leased by a school or a school bus contractor or is operated by a school district employe.

5. Notwithstanding ss. 111.321, 111.322 and 111.335, may not be a person convicted within a 2-year period of reckless driving under s. 346.62 or a local ordinance in conformity with s. 346.62 (2) or a law of a federally recognized American Indian tribe or band in this state in conformity with s. 346.62 (2), operating a motor vehicle while operating privileges are suspended or revoked under s. 343.44 (1) or a local ordinance in conformity therewith or a law of a federally recognized American Indian tribe or band in this state in conformity with s. 343.44 (1) with respect to operation of a motor vehicle while operating privileges are suspended or revoked, any of the offenses enumerated under s. 343.31 (1) or (2), or 2 or more offenses under s. 346.63 (7) or a local ordinance in conformity therewith or a law of a federally recognized American Indian tribe or band in this state in conformity with s. 346.63 (7), or a conviction under the law of another jurisdiction, as those terms are defined in s. 340.01 (9r) and (41m), respectively, prohibiting reckless or careless driving, as those or substantially similar terms are used in that jurisdiction's laws, or a conviction, suspension or revocation that would be counted under s. 343.307 (2) (a) to (g), or a person convicted within a 5-year period of violating s. 940.09 (1) or 940.25. Upon request of the operator or school, the department shall certify whether the operator meets this requirement.

(cm) *Waiver of operator requirement.* Notwithstanding par. (c) 3., with respect to the operator of a vehicle under sub. (1) (a), a school board or the governing body of a private school may waive the requirement that an operator have sufficient use of both hands if the operator has sufficient use of one hand to safely operate the vehicle which the school board or governing body of the private school proposes the operator use, as substantiated by a special driving examination conducted by the department of transportation. The department of transportation shall conduct the special examination under this paragraph upon the request of a school board, the governing body of a private school or the operator.

(d) *Seating requirements.* The vehicle may not be used to transport more persons than can be seated on the permanently mounted seats facing forward without interfering with the operator.

History: 1983 a. 175; 1985 a. 100, 240, 332, 337; 1987 a. 3, 358; 1989 a. 105, 176, 359; 1991 a. 39, 277; 1995 a. 113.

Application of this section to various methods of transportation discussed. 75 Atty. Gen. 146 (1986).

121.56 School bus routes. The school board of each district shall make and be responsible for all necessary provisions for the transportation of pupils, including establishment, administration and scheduling of school bus routes. Upon the request of any school board, the department shall provide advice and counsel on problems of school transportation. Any private school shall, upon the request of the public school officials, supply all necessary information and reports. The transportation of public and private school pupils shall be effectively coordinated to insure the safety and welfare of the pupils. Upon receipt of a signed order from the secretary, the school board shall discontinue any route specified by the secretary.

NOTE: This section is shown as amended eff. 1–1–96 by 1995 Wis. Act 27. The treatment by Act 27 was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95–2168–OA. Prior to Act 27 it read:

121.56 School bus routes. The school board of each district shall make and be responsible for all necessary provisions for the transportation of pupils, including establishment, administration and scheduling of school bus routes. Upon the request of any school board, the state superintendent shall provide advice and counsel on problems of school transportation. Any private school shall, upon the request of the public school officials, supply all necessary information and reports. The transportation of public and private school pupils shall be effectively coordinated to insure the safety and welfare of the pupils. Upon receipt of a signed order from the state superintendent, the school board shall discontinue any route specified by the state superintendent.

History: 1993 a. 492; 1995 a. 27.

See note to 121.54, citing *Hahner v. Board of Ed. Wisconsin Rapids*, 89 W (2d) 180, 278 NW (2d) 474 (Ct. App. 1979).

121.57 Board and lodging or house rental in lieu of transportation. (1) (a) If a school board determines it is to the advantage of the school district and if the parent or guardian determines it is to the advantage of the pupil that board and lodging in lieu of transportation be provided for all or part of the time for a pupil of the school district required to be transported or for whom it has been authorized under s. 121.54 (2), the school board shall enter into a written contract under which the pupil shall be properly boarded and lodged and the school board shall pay for such board and lodging. The pupil's parent or guardian may select the home in which the pupil is boarded and lodged. If a school board determines it is in the interest of the school district, it may pay the tuition of a pupil in a school in another school district in lieu of providing transportation to a school in the school district of residence or board and lodging. If the distance from the pupil's home to the school in another school district is 2 miles or more, the school board of the district of residence shall provide transportation.

(b) This subsection also applies to handicapped children. The department may grant permission for a handicapped child to be transported to a school in another school district if an acceptable form of transportation is provided and if such school offers equal or better educational opportunities for the child.

NOTE: Par. (b) is shown as amended eff. 1–1–96 by 1995 Wis. Act 27. The treatment by Act 27 was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95–2168–OA. Prior to Act 27 it read:

(b) This subsection also applies to handicapped children. The state superintendent may grant permission for a handicapped child to be transported to a school in another school district if an acceptable form of transportation is provided and if such school offers equal or better educational opportunities for the child.

(2) If a school board determines it is in the interest of the school district to rent a house for the family of children required to be transported in lieu of providing such transportation, it may enter into a written lease for such housing and pay as rental therefor not more than the amount which otherwise would be paid for transportation.

(3) This section does not apply to pupils who attend private schools.

History: 1993 a. 492; 1995 a. 27 s. 9145 (1).

121.58 State aid. (1) REPORT. In the report filed under s. 120.18 the school district clerk shall include such information as the department requires on the number of pupils for whom transportation or board and lodging is provided.

(2) STATE AID FOR TRANSPORTATION. (a) A school district which provides transportation to and from a school under ss. 121.54 (1) to (3), (5) and (6) and 121.57 shall be paid state aid for such transportation at the rate of \$30 per school year per pupil so transported whose residence is at least 2 miles and not more than 5 miles from the school attended, \$45 per school year per pupil so transported whose residence is at least 5 miles and not more than 8 miles from the school attended, \$60 per school year per pupil so transported whose residence is at least 8 miles and not more than 12 miles from the school attended, \$68 per school year per pupil so transported whose residence is at least 12 miles and not more than 15 miles from the school attended, \$75 per school year per pupil so transported whose residence is at least 15 miles and not more than 18 miles from the school attended, and \$85 per school year per pupil so transported whose residence is more than 18 miles from the school attended. Such state aid shall be reduced proportionately in the case of a pupil transported for less than a full school year because of nonenrollment. State aid for transportation shall not exceed the actual cost thereof. No state aid of any kind may be paid to a school district which charges the pupil transported or his or her parent or guardian any part of the cost of transportation provided under ss. 121.54 (1) to (3), (5) and (6) and 121.57 or which wilfully or negligently fails to transport all pupils for whom transportation is required under s. 121.54.

(b) A school board that provides transportation under s. 121.54 (2) (am) shall be paid state aid for such transportation at the rates specified and according to the conditions established under par. (a), except that the amount of state aid may not exceed the amount which the school district would receive for transporting the child between the child's residence and school attended under s. 121.54 (1) to (3), (5), (6) or (9) or 121.57.

(c) A school district which provides transportation to and from a school under s. 121.54 (9) shall be paid state aid for such transportation at the rate of \$12 per school year per pupil so transported. Such state aid shall be reduced proportionately in the case of a pupil transported for less than a full year because of nonenrollment. State aid for such transportation shall not exceed the actual cost thereof.

(3) STATE AID FOR BOARD AND LODGING. A school district which provides board and lodging or housing under s. 121.57 (2) in lieu of transportation shall be paid state aid for such board and lodging or housing at the rate of not more than \$6 per week of 5 days for each pupil so boarded and lodged or housed, but not to exceed 60% of the cost. For children with exceptional educational needs such state aid shall be supplemented by the state aid under s. 115.88 in an amount not to exceed the full cost of such board and lodging.

(4) STATE AID FOR SUMMER CLASS TRANSPORTATION. Annually on or before October 1 of the year in which transportation is provided under s. 121.54 (4), the school district clerk shall file with the department a report, containing such information as the department requires, on transportation provided by the school board to and from summer classes. Upon receipt of such report and if the summer classes meet the requirements of s. 121.14 (1), state aid shall be paid for such transportation. A school district which provides such transportation shall be paid state aid for such transportation at the rate of \$4 per pupil transported to and from public school whose residence is at least 2 miles and not more than 5 miles by the nearest traveled route from the public school attended, and \$6 per pupil transported to and from public school whose residence is more than 5 miles by the nearest traveled route from the public school attended, if the pupil is transported 30 days or more. The state aid shall be reduced proportionately if the pupil is transported less than 30 days.

(5) DEPARTMENT APPROVAL. If the department is satisfied that transportation or board and lodging was provided in compliance with law, the department shall certify to the department of administration the sum due the school district. In case of differences concerning the character and sufficiency of the transportation or

board and lodging, the department may determine such matter and its decision is final.

NOTE: Sub. (5) is shown as amended eff. 1–1–96 by 1995 Wis. Act 27. The treatment by Act 27 was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95–2168–OA. Prior to Act 27 it read:

(5) STATE SUPERINTENDENT APPROVAL. If the state superintendent is satisfied that transportation or board and lodging was provided in compliance with law, the state superintendent shall certify to the department of administration the sum due the school district. In case of differences concerning the character and sufficiency of the transportation or board and lodging, the state superintendent may determine such matter and his or her decision thereon is final.

(6) APPROPRIATION PRORATED. If the appropriation under s. 20.255 (2) (cr) in any one year is insufficient to pay the full amount of approved claims under this section, state aid payments shall be prorated among the school districts entitled thereto.

(7) PAYMENT. Beginning with payments made in the 1985–86 school year, each school district entitled to state aid under this section shall receive its total aid entitlement in January.

History: 1971 c. 125 s. 522 (1); 1973 c. 89, 333; 1975 c. 392; 1977 c. 29; 1979 c. 34 ss. 966d, 2102 (43) (a); 1979 c. 221; 1983 a. 27, 538; 1985 a. 29; 1993 a. 492; 1995 a. 27, 439.

SUBCHAPTER V

TUITION PAYMENTS

121.75 Construction. To the extent feasible, this subchapter shall be construed so that the tuition charge for a pupil shall:

- (1) Include any unusual costs associated with the pupil.
 - (2) Exclude any costs associated with the pupil which are paid from a source other than tuition and property taxes.
 - (3) Cover only the period during which services were actually provided or available to the pupil.
 - (4) Not impose a financial burden on the agency of service.
- History:** 1985 a. 29.

121.76 Definitions and general provisions. (1) DEFINITIONS. In this subchapter:

(a) “Agency of service” means a school board, board of control of a cooperative educational service agency, county handicapped children’s education board or governing body of a nonsectarian private school or university model school, which provides services for which tuition may be charged.

(b) “Pupil” includes a child with exceptional educational needs, as defined in ss. 115.76 (2) and (3).

(c) “Specified services” means social work; guidance; health; psychological, speech–language pathology and audiology services; supervision; coordination; and transportation.

(2) GENERAL PROVISIONS. (a) All tuition shall be calculated under s. 121.83 unless the department approves an alternative procedure consistent with s. 121.75.

NOTE: Par. (a) is shown as amended eff. 1–1–96 by 1995 Wis. Act 27. The treatment by Act 27 was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95–2168–OA. Prior to Act 27 it read:

(a) All tuition shall be calculated under s. 121.83 unless the state superintendent approves an alternative procedure consistent with s. 121.75.

(b) A written agreement may provide for the prepayment in instalments of up to 75% of the estimated tuition during the school year in which services are provided.

(c) The agency of service shall rebate a proportional share of state or federal aid received for pupils for whom it received tuition. The rebate shall be paid to the agency or person who paid the tuition within 30 days of its receipt by the agency of service.

History: 1985 a. 29; 1989 a. 316; 1995 a. 27 s. 9145 (1).

121.77 Admission of nonresident pupils. (1) Every elementary school and high school shall be free to all pupils who reside in the school district. If facilities are adequate, a school board, board of control of a cooperative educational service agency or county handicapped children’s education board may admit nonresident pupils who meet its entrance requirements. Nonresident pupils shall have all the rights and privileges of resi-

dent pupils and shall be subject to the same rules and regulations as resident pupils. The agency of service shall charge tuition for each nonresident pupil.

(2) Annually on or before September 1, the clerk or secretary of the agency of service shall file:

(a) A tuition claim for each nonresident pupil or adult for whom services were provided under this subchapter during the preceding school year. The claim shall be filed with the school district clerk under s. 121.78, the department under s. 121.79, the county clerk under s. 121.80, the pupil’s parent or guardian under s. 121.81 or the adult under s. 121.82. Credit shall be given for prepayments.

NOTE: Par. (a) is shown as amended eff. 1–1–96 by 1995 Wis. Act 27. The treatment by Act 27 was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95–2168–OA. Prior to Act 27 it read:

(a) A tuition claim for each nonresident pupil or adult for whom services were provided under this subchapter during the preceding school year. The claim shall be filed with the school district clerk under s. 121.78, the state superintendent under s. 121.79, the county clerk under s. 121.80, the pupil’s parent or guardian under s. 121.81 or the adult under s. 121.82. Credit shall be given for prepayments.

(b) A certified copy of each tuition claim under par. (a) with the department.

NOTE: Par. (b) is shown as amended eff. 1–1–96 by 1995 Wis. Act 27. The treatment by Act 27 was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95–2168–OA. Prior to Act 27 it read:

(b) A certified copy of each tuition claim under par. (a) with the state superintendent.

History: 1977 c. 29, 78, 203; 1985 a. 29; 1993 a. 16; 1995 a. 27 s. 9145 (1).

121.78 Tuition payments by school districts. (1) BY AGREEMENT. (a) Upon the approval of the department, the school board of the district of residence and the school board of the district of attendance may make a written agreement to permit an elementary or high school pupil to attend a public school, including an out–of–state school, outside the school district of residence, and the school district of residence shall pay the tuition. The school district of residence shall be paid state aid as though the pupil were enrolled in the school district of residence.

NOTE: Par. (a) is shown as amended eff. 1–1–96 by 1995 Wis. Act 27. The treatment by Act 27 was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95–2168–OA. Prior to Act 27 it read:

(a) Upon the approval of the state superintendent, the school board of the district of residence and the school board of the district of attendance may make a written agreement to permit an elementary or high school pupil to attend a public school, including an out–of–state school, outside the school district of residence, and the school district of residence shall pay the tuition. The school district of residence shall be paid state aid as though the pupil were enrolled in the school district of residence.

(b) A school board, upon its own order, may provide for the enrollment of a pupil in a public school located outside this state, if the course of study in such school is equivalent to the course of study in this state and if the school is at least 1.5 miles nearer the pupil’s home than any public school in this state. The school board shall pay the tuition for such pupil and the school district shall be paid state aid as though such pupil was enrolled in the school district of residence. The school board shall pay for the transportation of a pupil so enrolled who resides 2 or more miles from such out–of–state school. The school district shall be paid state aid under subch. IV for the transportation of such pupil as though the pupil had been transported to the school of the school district of residence.

(c) 1. The parent or guardian of a pupil may request the school board of the school district in which the pupil resides to provide for the enrollment of the pupil at a public school located outside this state under par. (b). The request shall be in writing. If the school board denies the request, the parent or guardian may request the school district boundary appeal board, in writing, to review the denial. Failure of a school board to act on a written request within 45 days of its submission to the school board constitutes a denial reviewable by the school district boundary appeal board.

2. Upon receipt of a request for review, the school district boundary appeal board may order the school board to pay tuition and transportation costs, as provided in par. (b), for the pupil’s

attendance at the out-of-state public school if the board finds that the course of study in the out-of-state public school is equivalent to the course of study in this state, the out-of-state public school is at least 1.5 miles nearer the pupil's home than any public school in this state, unusual hazards exist for the transportation of the pupil to and from the public school in his or her school district of residence, the out-of-state public school agrees to accept the pupil, and the tuition for the pupil does not exceed the per pupil costs of the out-of-state public school that are attributable to the enrollment of Wisconsin pupils.

3. The school district of residence shall be paid state aid for a pupil attending an out-of-state public school under this paragraph as though the pupil was enrolled in the school district, and shall be paid transportation aid under subch. IV as though the pupil had been transported to the school of the school district of residence.

(2) REORGANIZED SCHOOL DISTRICTS. (a) The school board of a district operating high school grades shall permit a high school pupil who resides in the school district as the result of school district reorganization under ch. 117 and has completed 9th and 10th grades at one high school outside the school district to complete the pupil's high school education at that high school. The school board of residence shall pay tuition for the pupil. If the parent or guardian of the pupil has paid tuition in order to enroll the pupil in the high school, the school board of residence shall reimburse the parent or guardian for the tuition upon receipt of a tuition claim within 3 years from the date the tuition was paid.

(b) A school district created or altered by a reorganization under ch. 117, in its first year of operating high school grades, may provide for its 11th and 12th grade pupils on a tuition basis and, in its 2nd such year, may provide for its 12th grade pupils on a tuition basis. The clerk of the school district in which nonresident pupils under this subsection are enrolled shall certify the number of such pupils enrolled to the department and to the clerk of their school district of residence. The school district of residence shall include such pupils in membership for aid under subch. II.

(c) A school district created or altered by a reorganization under ch. 117 which has at least one operating high school within its territory and which does not have sufficient building facilities to provide high school educational services for all of the high school pupils residing in the reorganized school district may provide for such high school pupils on a tuition basis for a period of 2 years. The reorganized school district shall be eligible for state aid in accordance with par. (b).

(3) SPECIAL PLACEMENT. Pupils may be placed in:

(a) Special education programs under s. 115.85 (2).

(b) Alternative programs under s. 118.15 (1) (d) 4. and 6.

(4) COURT-ORDERED EDUCATIONAL SERVICES. If a pupil is receiving educational services as the result of a court order under s. 48.345 (12) or 938.34 (7d), the school board of the school district in which the pupil resided at the time of issuance of the court order shall pay tuition for the pupil. A school board paying tuition for a pupil under this subsection shall count the pupil as 1.0 pupil in membership for general aid under subch. II. The school board shall pay each agency specified under s. 48.345 (12) (a) 2. to 4. or 938.34 (7d) (a) 2. to 4., for each full-time equivalent pupil served by the agency, an amount equal to at least 80% of the average per pupil cost for the school district. No state aid may be paid to the technical college district for pupils attending the technical college under s. 48.345 (12) (a) 4. or 938.34 (7d) (a) 4.

History: 1977 c. 29, 418; 1979 c. 244; 1985 a. 29 ss. 1785 to 1787, 1796, 3202 (43); 1987 a. 285; 1989 a. 114, 359; 1993 a. 399; 1995 a. 27 s. 9145 (1); 1995 a. 77.

121.79 Tuition payments by state. (1) The state shall pay tuition from the appropriation under s. 20.255 (2) (cg) for pupils attending public schools in the following cases:

(a) For pupils in children's homes.

(b) For pupils whose parents or guardians are employed at and reside on the grounds of a state or federal military camp, federal veteran hospital or state charitable or penal institution.

(d) For pupils in foster homes, treatment foster homes or group homes, if:

1. The foster, treatment foster or group home is located outside the school district in which the pupil's parent or guardian resides; and

2. The foster, treatment foster or group home is exempted under s. 70.11.

(2) When transportation is provided for pupils under this section, state aid shall be paid in accordance with subch. IV.

History: 1971 c. 125 ss. 459, 460, 522 (1); 1973 c. 89, 90, 336; 1975 c. 39, 199; 1977 c. 29; 1979 c. 34 s. 2102 (43) (a); 1979 c. 60, 221; 1983 a. 27 ss. 1486m, 2202 (42); 1985 a. 29; 1993 a. 446.

121.80 Tuition payments by counties. The county shall pay the elementary and high school tuition of every pupil whose parent or guardian is employed at and resides on the grounds of a county institution. The county board may charge such tuition to the account of the county asylum or the county home.

History: 1985 a. 29.

121.81 Tuition payments by parents. (1) **GENERAL.** Before the admission of a nonresident pupil to an elementary or a high school of a school district, the school board of that district shall make a written agreement with the parents for the payment of tuition at the rate established in accordance with this subchapter, except when the tuition is otherwise chargeable under this subchapter or under subch. V of ch. 115.

(2) **SPECIAL.** (a) A pupil whose parent or legal custodian is a resident of this state but not a resident of the school district may file with the school board of the district a written application for enrollment in the schools of the school district. The application shall be accompanied by a written declaration of the parent or legal custodian that the parent or legal custodian will establish residence in the school district by a specified time. If facilities are adequate, the school board may permit the pupil to enroll in the schools of the school district, and may require prepayment of a tuition fee for 9 school weeks or may waive the tuition requirement for that pupil. If the parent or legal custodian establishes residence in the school district within such 9 school weeks, the school board shall refund the tuition fee. If such residence is not established there shall be no refund of the tuition fee but another written application for enrollment may be filed for the next succeeding 9 school weeks and, upon prepayment of a tuition fee for such 9 school weeks, the school board may permit the pupil to reenroll. If the parent or legal custodian establishes residence in the school district within the second 9 school weeks, the school board shall refund the tuition fee for the second 9 school weeks.

(b) If the parent or legal custodian establishes residence in the school district prior to the expiration of the first 18 school weeks of the school term and if the pupil was enrolled in the school district on the 3rd Friday in September, the pupil shall be considered a resident pupil in computing general aid under subch. II.

(c) The parent or legal custodian of a pupil who is enrolled under this subsection shall be responsible for the transportation of such pupil to the school in which the pupil is so enrolled. No transportation aid under subch. IV may be paid for such transportation.

History: 1971 c. 200; 1977 c. 29; 1979 c. 346 s. 15; 1993 a. 492.

121.82 Tuition payment by adult. An adult for whom the school district provides services under s. 120.13 (4) shall provide for the payment of tuition.

History: 1985 a. 29.

121.83 Computation of tuition. (1) (a) The net school cost for a school year is the sum of the net cost of the general fund, the net cost of the debt service fund, all tuition revenues under this

subchapter and special transfer aid under s. 121.85 (6) (b) 2. and 3. for that school year for the agency of service, except as follows:

1. If the agency of service does not transport the pupil to and from school:

- a. The cost of pupil transportation shall be subtracted.
- b. State aid for pupil transportation shall be added.

2. If the agency of service counts the pupil under s. 121.05 (1) (a), state general aid shall be subtracted.

3. If the pupil is enrolled in a program for children with exceptional educational needs under subch. V of ch. 115:

a. The cost of instruction and specified services shall be subtracted.

b. The federal and state aid for pupil transportation and exceptional education shall be added.

(b) The regular annual tuition rate is the net school cost divided by the average daily membership of the agency of service.

(c) If the pupil is enrolled in a program for children with exceptional educational needs under subch. V of ch. 115, the special annual tuition rate is the sum of instructional and specified services costs unique to that program divided by the average daily membership of all pupils enrolled in the program, including those for whom tuition is paid.

(d) The annual tuition rate is the sum of the regular annual tuition rate and the special annual tuition rate, if any.

(e) The daily tuition rate is the annual tuition rate divided by the number of school days in the session.

(2) (a) The tuition for the regular school year is the daily tuition rate multiplied by the number of school days the pupil was enrolled. No reduction of tuition may be made because of the absence of a pupil, unless the pupil was absent more than 10 consecutive school days, in which case a reduction shall be made only for the absence in excess of 10 school days.

(b) The tuition for summer school shall be the daily tuition rate for the previous school year multiplied by 180 times the summer average daily membership equivalent of the pupil.

(3) All disbursements for tuition shall be made from the school district general fund. All receipts for tuition shall be made to the school district general fund.

History: 1977 c. 29; 1981 c. 20; 1985 a. 29 ss. 1790 to 1792, 1794; Stats. 1985 s. 121.83; 1991 a. 39.

121.84 Tuition waiver; special cases. (1) (a) A school board may permit a pupil who is enrolled in a school under its jurisdiction and is a resident of the school district at the beginning of the school year to complete the school year at the school without payment of tuition, even though the pupil is no longer a resident of the school district.

(b) Upon request of a pupil's parent or guardian, a school board of a district operating high school grades shall permit a pupil who has gained 12th grade status in a high school under its jurisdiction and is a resident of the school district at the time of gaining such status to complete 12th grade at the high school without payment of tuition, even though the pupil is no longer a resident of the school district.

(c) A school board may permit a foreign exchange student to attend school in the school district without payment of tuition.

(1m) The school boards of 2 school districts operating high school grades may enter into an agreement under which a high school pupil who resides in one of the school districts as the result of a reorganization under ch. 117 and who has completed 9th and 10th grades at a high school in the other school district may complete his or her high school education at the latter high school without payment of tuition. The school district of attendance shall count the pupil in its membership for state aid purposes under subch. II.

(2) The transportation requirement in s. 121.54 (2) shall not apply to transportation beyond the school district boundaries for pupils under this section.

(3) The school district of attendance shall continue to count pupils under sub. (1) in membership.

History: 1973 c. 90; 1977 c. 29, 78; 1985 a. 29, 218; 1989 a. 31, 114.

SUBCHAPTER VI

SPECIAL TRANSFER AID

121.845 Definitions. In this subchapter:

(1) "Attendance area" means the geographical area within a school district established by the school board thereof for the purpose of designating the elementary, middle, high or other school which pupils residing within the area normally would attend.

(2) "Minority group pupil" means a pupil who is a Black American, a native American, a Spanish-surnamed American or an Oriental American and who has reached the age of 4 on or before September 1 of the year he or she enters school.

(3) "School" means an organized educational activity operated by the school board and approved by the department.

NOTE: Sub. (3) is shown as amended eff. 1-1-96 by 1995 Wis. Act 27. The treatment by Act 27 was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95-2168-OA. Prior to Act 27 it read:

(3) "School" means an organized educational activity operated by the school board and approved by the department of public instruction.

History: 1985 a. 29 ss. 1797, 1799; 1995 a. 27.

121.85 Special transfer programs. (1) DEFINITION. In this section, "net school cost" is the sum of the net cost of the general fund and the net cost of the debt service fund for the previous school year, plus any aid received in the previous year under this section.

(2) **APPLICABILITY OF SECTION.** This section applies to transfers:

(a) *Interdistrict.* 1. By minority group pupils who reside in an attendance area in a school district where minority group pupils constitute 30% or more of the number of pupils enrolled in the school serving that attendance area and which the pupil would normally attend, from that district to a school in a school district where minority group pupils constitute less than 30% of the number of pupils enrolled in that school, as of May 1 of the prior year.

2. By nonminority group pupils who have reached the age of 4 on or before September 1 of the year they enter school and who reside in an attendance area in a school district where minority group pupils constitute less than 30% of the number of pupils enrolled in the school serving that attendance area and which the pupil would normally attend in the district, from that district to a school in a school district where minority group pupils constitute 30% or more of the number of pupils enrolled in that school, as of May 1 of the prior year.

(b) *Intradistrict.* 1. By minority group pupils who reside in an attendance area where minority group pupils constitute 30% or more of the number of pupils enrolled in the school serving that attendance area and which the pupil normally would attend, from that school to another school within the district where minority group pupils constitute less than 30% of the number of pupils enrolled in that school or to a school serving the entire district.

2. By nonminority group pupils who have reached the age of 4 on or before September 1 of the year they enter school and who reside in an attendance area where minority group pupils constitute less than 30% of the number of pupils enrolled in the school serving that attendance area and which the pupil normally would attend, from that school to another school within the district where minority group pupils constitute 30% or more of the number of pupils enrolled in that school or to a school serving the entire district.

(3) **TRANSFER AGREEMENTS.** In accordance with sub. (2) and with the approval of the parents or guardian of the pupil:

(a) *Interdistrict.* The school board of the district of residence and the school board of the district of attendance may enter into

annual written agreements to permit a pupil to attend a public school outside the school district of residence.

(b) *Intradistrict*. The school board of the district may permit a pupil to attend a public school within the district which is outside the pupil's attendance area.

(4) OTHER PLANS TO REDUCE RACIAL IMBALANCE. (a) Pupil transfers resulting from a plan implemented by the school board to reduce racial imbalance in a school district or attendance area shall be deemed to be transfer agreements under sub. (3) and shall be eligible for state aid under this section if the transfers comply with sub. (2).

(b) Any school board that, prior to May 4, 1976, established a plan to reduce racial imbalance in the school district is eligible for state aid under sub. (6) (a) if the department approves the plan.

NOTE: Par. (b) is shown as amended eff. 1–1–96 by 1995 Wis. Act 27. The treatment by Act 27 was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95–2168–OA. Prior to Act 27 it read:

(b) Any school board that, prior to May 4, 1976, established a plan to reduce racial imbalance in the school district is eligible for state aid under sub. (6) (a) if the state superintendent approves the plan.

(5) PART-TIME TRANSFERS. Part-time transfers for curriculum offerings also may be permitted under this section. The department shall establish procedures for aid computations in such cases.

(6) STATE AIDS. (a) *Intradistrict transfer*. The school district of attendance of pupils transferring from one attendance area to another under subs. (3) (b) and (4) shall be entitled to an amount determined as follows:

1. Divide the state aid received in the current school year under s. 121.08 by the membership used to compute state aid to the school district for the current school year.

2. Multiply the number of transfer pupils by 0.25.

3. Multiply the quotient under subd. 1. by the product under subd. 2.

(b) *Interdistrict transfer*. 1. If a pupil transfers from one school district to another under sub. (3) (a), the school district of residence shall count each such pupil as 1.0 pupil in membership for general aid under subch. II.

2. In each school year, the school district of attendance of pupils transferring from one school district to another under sub. (3) (a) shall receive an amount equal to that produced by multiplying the number of pupils transferred into the school district under sub. (3) (a) in the previous school year by the amount produced by dividing the school district's net school cost by the sum of the membership, plus the number of pupils transferred into the school district of attendance in the previous school year under sub. (3) (a). This subdivision applies to aid paid in the 1995–96 school year only if the number of pupils transferring from one school district to another under sub. (3) (a) in the 1994–95 school year constitutes less than 5% of the total membership of the school district of attendance.

3. If, in the 1994–95 school year, the number of pupils transferring from one school district to another under sub. (3) (a) constitute 5% or more of the total membership of the school district of attendance, in the 1995–96 school year the school district of attendance shall receive an amount equal to 1.2 multiplied by the amount to which the district is entitled under subd. 2.

(c) *Special applications*. If a school district finds that it has incurred costs beyond aids received because of the number of pupils which it has accepted as transfers under this section, it may apply to the department for supplementary aids under this subsection. If the department finds that the school district has incurred costs for which reimbursement has not been made under par. (b) 2. or 3., it shall supplement the state aids paid to the district under this section in an amount equal to the unreimbursed cost.

(d) *Aid in lieu of tuition*. Aid payments under this section shall be in lieu of tuition payments required under subch. V. Aid payments under this section shall not be made for interdistrict transfers under sub. (6) (b), if tuition payments are made from funds received by the school district of residence under P.L. 73–167 and

P.L. 81–874, as amended, for pupils so transferring from such district of residence.

(e) *Sources of aid payments*. State aid under this section shall be paid from the appropriation under s. 20.255 (2) (ac).

(f) *Exception*. A pupil enrolled in a kindergarten program or in a preschool program under subch. V of ch. 115 shall be multiplied under par. (a) 2. by a number equal to the result obtained by multiplying 0.325 by the appropriate fraction under s. 121.004 (7) (c), (cm) or (d), and shall be counted under par. (b) 1. as a number equal to the result obtained by multiplying 1.0 by the appropriate fraction under s. 121.004 (7) (c), (cm) or (d).

(g) *Minority census tracts*. 1. In this paragraph:

- a. "Base year enrollment" means the number of pupils enrolled in the nonspecialty public schools located in minority census tracts in the 1984–85 school year.

- b. "Minority census tract" means a census tract that has a non-white population of 20% or more, according to the most recent federal decennial census, and that is located in a school district containing a 1st class city.

2. Each pupil attending a nonspecialty public school in a minority census tract who is in excess of the base year enrollment shall be counted as an additional 0.2 pupil in membership for general aid under subch. II.

(7) TRANSPORTATION. Transportation shall be provided to pupils transferring schools under this section if required under subch. IV. Transportation for a pupil attending a public school under sub. (3) (a) outside the pupil's school district of residence shall be provided pursuant to agreement between the school district of residence and the school district of attendance. If either the school district of residence or the school district of attendance operates a program of intradistrict transfers under sub. (3) (b), that school district shall be responsible for the cost of transportation. The school district may meet this responsibility either by contracting directly for provision of transportation or by reimbursing another school district for the cost of such a contract. Transportation for a pupil attending a public school under sub. (3) (b) outside his or her attendance area of residence may be provided by his or her school district. A school district providing transportation under this subsection may not claim transportation aid under subch. IV for pupils so transported.

(8) TRANSFERRED PUPILS. Pupils transferring schools under this section shall be subject to the same rules and regulations as resident pupils and shall have the responsibilities, privileges and rights of resident pupils in the school district or attendance area. Subject to this subsection, a pupil transferring schools under either sub. (3) (a) or (b) has the right to complete his or her education at the elementary, middle or high school to which he or she transfers so long as full funding therefor is available under s. 20.255 (2) (ac).

(9) PLANNING COUNCILS. (a) Annually on or before October 1, the school board of each school district lying wholly or partially within a county having a population of 500,000 or more shall organize a planning council with the school board of the school district within such county containing a 1st class city. Each planning council shall consist of 10 members, 5 members from the school district containing a 1st class city and 5 members from the school district which does not contain a 1st class city. The representatives of the planning council from each school district shall include, for terms of membership determined by the school board, 3 school board members, the school district administrator and one public member who resides in the school district. In the case of school districts containing a 1st class city, the school board may appoint the same persons as representatives to more than one planning council, and the school district administrator may select a representative to serve in his or her place on any planning council. Within 180 days after its appointment, each planning council shall make a recommendation to its appointing school boards on a cooperative program designed to facilitate transfers under sub. (3) (a) for the ensuing school term to promote cultural and racial

integration. The recommendations shall include achievement and other relevant factors for the school boards to consider in permitting pupils to transfer for the purpose of facilitating, so far as possible, a balanced representation of the pupils who might transfer under sub. (3) (a). Within 90 days after receiving the recommendation of the planning council, each school board shall determine the extent to which its district will participate in the cooperative program. Upon making its determination, each school board shall disseminate information concerning the cooperative program to pupils and parents and guardians of pupils in the school district. Information shall be disseminated regarding the availability of transfers, the nature of the transportation to be provided, the courses and programs to be available to transfer pupils and any other aspects which the school board determines to be appropriate.

(b) Within 90 days after determining that its district will participate in transfers under this section, the school board of a district not subject to par. (a) shall make appointments to, and shall organize with other participating school districts, a planning council to make recommendations to facilitate cooperative programs.

(c) The obligation under par. (a) to organize planning councils shall apply only with regard to school terms for which full pupil transfer aids are appropriated under s. 20.255 (2) (ac) and planning council assistance funds are appropriated under s. 20.255 (1) (a).

History: 1975 c. 220; 1977 c. 29, 418; 1979 c. 34 ss. 966m, 2102 (43) (a); 1979 c. 221; 1981 c. 20, 385; 1983 a. 27 s. 2202 (42); 1983 a. 189; 1985 a. 29; 1987 a. 399; 1989 a. 31, 259, 336; 1991 a. 39, 48; 1993 a. 16; 1995 a. 27 ss. 4095m to 4098, 9145 (1).

NOTE: Chapter 220, laws of 1975, which created this section, contains a legislative declaration of policy in section 1 of the act.

121.86 Merged attendance area programs. (1) DEFINITIONS. In this section:

(a) “Base school” means the school in a merged attendance area that has the lowest enrollment of the schools in the merged attendance area.

(b) “Merged attendance area” means an attendance area that contains one of the following:

1. Two or more schools that offer elementary grades, with each such grade offered at only one school.
2. Two or more schools that offer middle school grades, with each such grade offered at only one school.
3. Two or more schools that offer high school grades, with each such grade offered at only one school.

(2) STATE AID. (a) Except as provided under sub. (3), if a school board establishes a merged attendance area after January 1, 1984, for the purpose of reducing racial imbalance in the school district, the school district shall be entitled to an amount determined as follows:

1. Divide the state aid received in the current school year under s. 121.08 by the membership used to compute state aid to the school district for the current school year.
2. Multiply the number of pupils enumerated under pars. (b) and (c) by 0.25.
3. Multiply the quotient under subd. 1. by the product under subd. 2.

(b) The number of minority group pupils enrolled in the base school, not to exceed:

1. The number of minority group pupils who reside in the merged attendance area; minus
2. The number of minority group pupils enrolled in the base school or 30% of the total enrollment of the base school, whichever is greater.

(c) The number of minority group pupils enrolled in the non-base schools located in the merged attendance area or 30% of the total enrollment of such nonbase schools, whichever is less.

(3) STATE AID EXCEPTION. Pupils under sub. (2) (b) and (c) who are enrolled in a kindergarten program or in a preschool program

under subch. V of ch. 115 shall be multiplied under sub. (2) (a) 2. by a number equal to the result obtained by multiplying 0.25 by the appropriate fraction under s. 121.004 (7) (c), (cm) or (d).

(4) TRANSPORTATION. A school district shall provide transportation to pupils under this section if required under subch. IV, but may not claim transportation aid under subch. IV for the number of pupils determined under sub. (2).

History: 1985 a. 29; 1987 a. 399; 1989 a. 31, 309, 336, 359; 1991 a. 39, 48, 315; 1993 a. 16; 1995 a. 27.

121.87 School district report. (1) Any school district that receives aid under this subchapter in the 1989–90 school year or in any school year thereafter shall submit a report to the department, on a form provided by the department, by August 15 of the following school year. The report shall include all of the following for the school year in which the school district received aid:

NOTE: Sub. (1) (intro.) is shown as amended eff. 1–1–96 by 1995 Wis. Act 27. The treatment by Act 27 was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95–2168–OA. Prior to Act 27 it read:

(1) Any school district that receives aid under this subchapter in the 1989–90 school year or in any school year thereafter shall submit a report to the state superintendent, on a form provided by the state superintendent, by August 15 of the following school year. The report shall include all of the following for the school year in which the school district received aid:

(a) The number of pupils who transferred to the school district, the number of pupils who transferred to another school district and the number of intradistrict transfers under this subchapter.

(b) The number of pupils who transferred to the school district under this subchapter who are eligible for free or reduced-price lunches under 42 USC 1758.

(c) A detailed description of how the school district used the aid received under this subchapter, including any expenditures on staff, materials and services that are not related to the special transfer program. The report shall separately describe the use of aid received under s. 121.85 (6) (b) 3.

(d) The additional costs incurred by the school district for the pupils who transferred to the school district under this subchapter, including the cost of any additional teachers and the costs of counseling, remediation and pupil transportation.

(e) Any other information requested by the department.

NOTE: Par. (e) is shown as amended eff. 1–1–96 by 1995 Wis. Act 27. The treatment by Act 27 was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95–2168–OA. Prior to Act 27 it read:

(e) Any other information requested by the state superintendent.

(2) The department shall develop a standard method for reporting under sub. (1).

NOTE: Sub. (2) is shown as amended eff. 1–1–96 by 1995 Wis. Act 27. Prior to 1–1–96 it reads:

(2) The state superintendent shall develop a standard method for reporting under sub. (1).

History: 1989 a. 31; 1995 a. 27 s. 9145 (1).

SUBCHAPTER VII

REVENUE LIMIT

121.90 Definitions. In this subchapter:

(1) “Number of pupils” means the number of pupils enrolled on the 3rd Friday of September, except that “number of pupils” excludes the number of pupils attending private schools under s. 119.23.

(1m) “Revenue” means the sum of state aid and the property tax levy.

(2) “State aid” means aid under ss. 121.08, 121.09, 121.10 and 121.105 and subch. VI, as calculated for the current school year on October 15 under s. 121.15 (4), except that “state aid” excludes any additional aid that a school district receives as a result of ss. 121.07 (6) (e) and (7) (e) and 121.105 (3) for school district consolidations that are effective on or after July 1, 1995, as determined by the department.

History: 1993 a. 16; 1995 a. 27.

121.905 Applicability. (1) In this section, “revenue ceiling” means \$5,300 in the 1995–96 school year and in any subsequent school year means \$5,600.

(2) The revenue limit under s. 121.91 does not apply to any school district in any school year in which its base revenue per member, as calculated under sub. (3), is less than its revenue ceiling.

(3) A school district’s base revenue per member is determined as follows:

(a) Calculate the sum of the amount of aid received under ss. 121.08, 121.10 and 121.105 and subch. VI in the previous school year and property taxes levied for the previous school year, excluding funds described under s. 121.91 (4) (c), and the costs of the county handicapped children’s education board program, as defined in s. 121.135 (2) (a) 2., for pupils who were school district residents and solely enrolled in a special education program provided by a county handicapped children’s education board in the previous school year.

(b) Divide the result in par. (a) by the sum of the average of the number of pupils in the 3 previous school years and the number of pupils who were school district residents and solely enrolled in a special education program provided by a county handicapped children’s education board program in the previous school year.

(c) 1. For the limit for the 1995–96 school year, add \$200 to the result under par. (b).

2. For the limit for the 1996–97 school year, add \$206 to the result under par. (b).

3. For the limit for the 1997–98 school year, add the result under s. 121.91 (2m) (c) 2. to the result under par. (b).

4. For the limit for the 1998–99 school year or for any school year thereafter, add the result under s. 121.91 (2m) (d) 2. to the result under par. (b).

(4) A school district that is exempt from the revenue limits under this section may not increase its base revenue per member to an amount that is greater than its revenue ceiling unless that school district follows the procedures prescribed in s. 121.91 (3).

History: 1995 a. 27.

121.91 Revenue limit. (1) Except as provided in subs. (3) to (5), no school district may increase its revenues for the 1993–94 school year to an amount that exceeds the greater of the following:

(a) The amount calculated as follows:

1. Add the sum of the net cost of the school district’s general fund and community service fund for the 1992–93 school year and the amount levied for the purposes under s. 120.10 (10m) for the 1992–93 school year to the aid received under subch. VI in the 1992–93 school year.

2. Divide the amount under subd. 1. by the average of the number of pupils in 1990, 1991 and 1992.

3. Add the result under subd. 2. to \$190.

4. Multiply the result under subd. 3. by the average of the number of pupils in 1991, 1992 and 1993.

(b) The amount calculated as follows:

1. Add the sum of the net cost of the school district’s general fund and community service fund for the 1992–93 school year and the amount levied for the purposes under s. 120.10 (10m) for the 1992–93 school year to the aid received under subch. VI in the 1992–93 school year.

2. Divide the amount under subd. 1. by the average of the number of pupils in 1990, 1991 and 1992.

3. Multiply the result under subd. 2. by the sum of 1.0 plus the allowable rate of increase under s. 73.0305 expressed as a decimal.

4. Multiply the result under subd. 3. by the average of the number of pupils in 1991, 1992 and 1993.

(2) Except as provided in subs. (3) and (4), no school district may increase its revenues for the 1994–95 school year to an amount that exceeds the greater of the following:

(a) The amount calculated as follows:

1. Divide the sum of the amount of state aid received in the previous school year and property taxes levied for the previous school year, excluding funds described under sub. (4) (c), by the average of the number of pupils in 1991, 1992 and 1993.

2. Multiply \$190 by the sum of 1.0 plus the allowable rate of increase under s. 73.0305 expressed as a decimal.

3. Add the result under subd. 1. to the result under subd. 2.

4. Multiply the result under subd. 3. by the average of the number of pupils in 1992, 1993 and 1994.

(b) The amount calculated as follows:

1. Divide the sum of the amount of state aid received in the previous school year and property taxes levied for the previous school year, excluding funds described under sub. (4) (c), by the average of the number of pupils in 1991, 1992 and 1993.

2. Multiply the result under subd. 1. by the sum of 1.0 plus the allowable rate of increase under s. 73.0305 expressed as a decimal.

3. Multiply the result under subd. 2. by the average of the number of pupils in 1992, 1993 and 1994.

(2m) (a) Except as provided in subs. (3) and (4), no school district may increase its revenues for the 1995–96 school year to an amount that exceeds the amount calculated as follows:

1. Divide the sum of the amount of state aid received in the previous school year and property taxes levied for the previous school year, excluding funds described under sub. (4) (c), by the average of the number of pupils in the 3 previous school years.

3. Add \$200 to the result under subd. 1.

4. Multiply the result under subd. 3. by the average of the number of pupils in the current and the 2 preceding school years.

(b) Except as provided in subs. (3) and (4), no school district may increase its revenues for the 1996–97 school year to an amount that exceeds the amount calculated as follows:

1. Divide the sum of the amount of state aid received in the previous school year and property taxes levied for the previous school year, excluding funds described under sub. (4) (c), by the average of the number of pupils in the 3 previous school years.

2. Add \$206 to the result under subd. 1.

3. Multiply the result under subd. 2. by the average of the number of pupils in the current and the 2 preceding school years.

(c) Except as provided in subs. (3) and (4), no school district may increase its revenues for the 1997–98 school year to an amount that exceeds the amount calculated as follows:

1. Divide the sum of the amount of state aid received in the previous school year and property taxes levied for the previous school year, excluding funds described under sub. (4) (c), by the average of the number of pupils in the 3 previous school years.

2. Multiply \$206 by 1.0.

3. Add the result under subd. 1. to the result under subd. 2.

4. Multiply the result under subd. 3. by the average of the number of pupils in the current and the 2 preceding school years.

(d) Except as provided in subs. (3) and (4), no school district may increase its revenues for the 1998–99 school year or for any school year thereafter to an amount that exceeds the amount calculated as follows:

1. Divide the sum of the amount of state aid received in the previous school year and property taxes levied for the previous school year, excluding funds described under sub. (4) (c), by the average of the number of pupils in the 3 previous school years.

2. Multiply the amount determined under par. (c) 2. for the previous school year by 1.0.

3. Add the result under subd. 1. to the result under subd. 2.

4. Multiply the result under subd. 3. by the average of the number of pupils in the current and the 2 preceding school years.

(3) (a) If a school board wishes to exceed the limit under sub. (1), (2) or (2m) otherwise applicable to the school district in any school year, it shall promptly adopt a resolution supporting inclu-

sion in the final school district budget of an amount equal to the proposed excess revenue. The resolution shall specify whether the proposed excess revenue is for a recurring or nonrecurring purpose, or, if the proposed excess revenue is for both recurring and nonrecurring purposes, the amount of the proposed excess revenue for each purpose. The school board shall call a special referendum for the purpose of submitting the resolution to the electors of the school district for approval or rejection. In lieu of a special referendum, the school board may specify that the referendum be held at the next succeeding spring primary or election or September primary or general election, if such election is to be held not earlier than 35 days after the adoption of the resolution of the school board.

(b) The school district clerk shall publish type A, B, C, D and E notices of the referendum under s. 10.01 (2). Notwithstanding s. 10.01 (2) (a), the type A notice shall include a statement of the amount of the excess revenue specified in par. (a) and a copy of the resolution under par. (a). Section 5.01 (1) applies in the event of failure to comply with the notice requirements of this paragraph.

(c) The referendum shall be held in accordance with chs. 5 to 12. The school district clerk shall provide the election officials with all necessary election supplies. The form of the ballot shall correspond substantially with the standard form for referendum ballots prescribed by the elections board under ss. 5.64 (2) and 7.08 (1) (a). The question submitted shall be whether the limit under sub. (1), (2) or (2m) may be exceeded by a specified amount. If the resolution provides that any of the excess revenue will be used for a nonrecurring purpose, the ballot in the election shall so state and shall specify the amount that will be used for a nonrecurring purpose. The school district clerk shall promptly certify the results of the referendum to the department. The limit otherwise applicable to the school district under sub. (1), (2) or (2m) is increased by the amount approved by a majority of those voting on the question.

NOTE: Par. (c) is shown as amended eff. 1–1–96 by 1995 Wis. Act 27. The treatment by Act 27 was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95–2168–OA. Prior to Act 27 it read:

(c) The referendum shall be held in accordance with chs. 5 to 12. The school district clerk shall provide the election officials with all necessary election supplies. The form of the ballot shall correspond substantially with the standard form for referendum ballots prescribed by the elections board under ss. 5.64 (2) and 7.08 (1) (a). The question submitted shall be whether the limit under sub. (1), (2) or (2m) may be exceeded by a specified amount. If the resolution provides that any of the excess revenue will be used for a nonrecurring purpose, the ballot in the election shall so state and shall specify the amount that will be used for a nonrecurring purpose. The school district clerk shall promptly certify the results of the referendum to the state superintendent. The limit otherwise applicable to the school district under sub. (1), (2) or (2m) is increased by the amount approved by a majority of those voting on the question.

(d) If an excess revenue is approved under this subsection for a recurring purpose, the excess revenue shall be included in the base for determining the limit for the next school year for purposes of this section. If an excess revenue is approved under this subsection for a nonrecurring purpose, the excess revenue shall not be included in the base for determining the limit for the next school year for purposes of this section.

(4) (a) 1. If a school board transfers to another governmental unit responsibility for providing any service that it provided in the preceding school year, the limit otherwise applicable under sub. (1), (2) or (2m) in the current school year is decreased by the cost that it would have incurred to provide that service, as determined by the department.

NOTE: Subd. 1. is shown as amended eff. 1–1–96 by 1995 Wis. Act 27. The treatment by Act 27 was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95–2168–OA. Prior to Act 27 it read:

1. If a school board transfers to another governmental unit responsibility for providing any service that it provided in the preceding school year, the limit otherwise applicable under sub. (1), (2) or (2m) in the current school year is decreased by the cost that it would have incurred to provide that service, as determined by the state superintendent.

2. If a school board increases the services that it provides by adding responsibility for providing a service transferred to it from another governmental unit in the previous school year, the limit otherwise applicable under sub. (1), (2) or (2m) in the current

school year is increased by the cost of that service, as determined by the department.

NOTE: Subd. 2. is shown as amended eff. 1–1–96 by 1995 Wis. Act 27. The treatment by Act 27 was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95–2168–OA. Prior to Act 27 it read:

2. If a school board increases the services that it provides by adding responsibility for providing a service transferred to it from another governmental unit in the previous school year, the limit otherwise applicable under sub. (1), (2) or (2m) in the current school year is increased by the cost of that service, as determined by the state superintendent.

3. If responsibility for providing a service is transferred from one school board to another under subs. 1. and 2., the department shall ensure that the amount of the decrease in the former school district's limit under sub. (2m) shall be equal to or greater than the amount of the increase in the latter school district's limit under sub. (2m).

(b) 1. If a school district increases its territory by a boundary change under s. 117.10, 117.11, 117.12, 117.13 or 117.132, the limit otherwise applicable in the school year beginning on the effective date of the boundary change under sub. (1), (2) or (2m) is increased by an amount equal to the cost of extending services to the attached territory in the school year to which the limit applies, as determined by the department.

NOTE: Subd. 1. is shown as amended eff. 1–1–96 by 1995 Wis. Act 27. The treatment by Act 27 was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95–2168–OA. Prior to Act 27 it read:

1. If a school district increases its territory by a boundary change under s. 117.10, 117.11, 117.12, 117.13 or 117.132, the limit otherwise applicable in the school year beginning on the effective date of the boundary change under sub. (1), (2) or (2m) is increased by an amount equal to the cost of extending services to the attached territory in the school year to which the limit applies, as determined by the state superintendent.

2. If a school district decreases its territory due to a boundary change under s. 117.11, 117.12, 117.13 or 117.132, the limit otherwise applicable in the school year beginning on the effective date of the boundary change under sub. (1), (2) or (2m) is decreased by an amount equal to the cost of services that it provided to the detached territory in the school year to which the limit applies, as determined by the department.

NOTE: Subd. 2. is shown as amended eff. 1–1–96 by 1995 Wis. Act 27. The treatment by Act 27 was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95–2168–OA. Prior to Act 27 it read:

2. If a school district decreases its territory due to a boundary change under s. 117.11, 117.12, 117.13 or 117.132, the limit otherwise applicable in the school year beginning on the effective date of the boundary change under sub. (1), (2) or (2m) is decreased by an amount equal to the cost of services that it provided to the detached territory in the school year to which the limit applies, as determined by the state superintendent.

(c) The limit under sub. (1), (2) or (2m) is increased by the following amount:

1. Funds needed for the payment of any general obligation debt service, including debt service on debt issued or reissued to fund or refund outstanding municipal obligations, interest on outstanding municipal obligations or the payment of related issuance costs or redemption premiums, authorized prior to August 12, 1993, by a resolution of the school board or by a referendum and secured by the full faith and credit of the school district.

2. Funds needed for the payment of any general obligation debt service, including debt service on debt issued or reissued to fund or refund outstanding municipal obligations, interest on outstanding municipal obligations or the payment of related issuance costs or redemption premiums, authorized on or after August 12, 1993, by a referendum and secured by the full faith and credit of the school district.

(d) If a school district's revenue in the preceding school year was less than the limit under sub. (2) or (2m) in the preceding school year, the limit otherwise applicable to the school district's revenue in the current school year under sub. (2m) is increased by an amount equal to 75% of the difference between the amount of its revenue in the preceding school year and the amount of the limit in the preceding school year under sub. (2) or (2m).

(e) If a school district receives less aid under 20 USC 7701 to 7703 in the 1994–95 school year or in any school year thereafter than it received in the previous school year, the limit otherwise applicable to the school district's revenue in the following school

year under sub. (2m) is increased by an amount equal to the reduction in such aid.

(5) (a) Upon request by a school board, the department may increase the school district's limit under sub. (1) by the amount necessary to allow the school district to avoid increasing its level of short-term borrowing over the amount of short-term borrowing incurred by the school district in the 1992–93 school year if the school district presents clear and convincing evidence of the need for the increase in the limit. The school board shall provide the department with any information that the department requires to make the determination.

NOTE: Par. (a) is shown as amended eff. 1–1–96 by 1995 Wis. Act 27. The treatment by Act 27 was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95–2168–OA. Prior to Act 27 it read:

(a) Upon request by a school board, the state superintendent may increase the school district's limit under sub. (1) by the amount necessary to allow the school district to avoid increasing its level of short-term borrowing over the amount of short-term borrowing incurred by the school district in the 1992–93 school year if the school district presents clear and convincing evidence of the need for the increase in the limit. The school board shall provide the state superintendent with any information that the state superintendent requires to make his or her determination.

(b) The department shall submit to the governor, and to the legislature under s. 13.172 (2), a report summarizing the requests made by school boards under par. (a) and the increases granted by the department.

NOTE: Par. (b) is shown as amended eff. 1–1–96 by 1995 Wis. Act 27. The treatment by Act 27 was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95–2168–OA. Prior to Act 27 it read:

(b) The state superintendent shall submit to the governor, and to the legislature under s. 13.172 (2), a report summarizing the requests made by school boards under par. (a) and the increases granted by the state superintendent.

History: 1993 a. 16; 1995 a. 27 ss. 4108m to 4114, 9145 (1).

121.92 Penalty for exceeding revenue limit. (1) In this

section, “excess revenue” means the amount by which a school district's revenue exceeds the maximum allowed under s. 121.91.

(2) The department shall do all of the following:

NOTE: Sub. (2) (intro.) is shown as amended eff. 1–1–96 by 1995 Wis. Act 27. The treatment by Act 27 was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95–2168–OA. Prior to Act 27 it read:

(2) The state superintendent shall do all of the following:

(a) Deduct from the state aid payment to a school district under s. 121.08 in the school year in which the school district exceeded the revenue limit an amount equal to the excess revenue for the school district or the amount of those aids, whichever is less.

(b) If the amount of the deduction under par. (a) is insufficient to cover the excess revenue, deduct from the other state aid payments to the school district in the school year in which the school district exceeded the revenue limit an amount equal to the remaining excess revenue or the amount of those payments, whichever is less.

(c) If the amount of the deductions under pars. (a) and (b) is insufficient to cover the excess revenue, order the school board to reduce the property tax obligations of its taxpayers by an amount that represents the remainder of the excess revenue. The school district's refunds to taxpayers who have already paid their taxes shall be increased by interest at the rate of 0.5% per month. If the school board violates the order, any resident of the school district may seek injunctive relief.

(d) Ensure that the amount of state aid reduction under pars. (a) and (b) lapses to the general fund.

(e) Ensure that the amount of the excess revenue is not included in determining the school district's limits in the succeeding school year.

History: 1993 a. 16; 1995 a. 27 s. 9145 (1).