

## 2011 DRAFTING REQUEST

### Bill

Received: **02/22/2012**

Received By: **tkuczens**

Wanted: **As time permits**

Companion to LRB:

For: **Jennifer Shilling (608) 266-5490**

By/Representing: **Tony Palese**

May Contact:

Drafter: **tkuczens**

Subject: **Education - school boards**

Addl. Drafters:

Extra Copies: **pg**

Submit via email: **YES**

Requester's email: **Sen.Shilling@legis.wisconsin.gov**

Carbon copy (CC:) to: **tracy.kuczenski@legis.wisconsin.gov**

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### Pre Topic:

No specific pre topic given

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### Topic:

School district energy performance contracting

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### Instructions:

See attached

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### Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?				_____			S&L
/P1	tkuczens 02/22/2012	jdye 02/28/2012	jfrantze 02/28/2012	_____	sbasford 02/28/2012		S&L
/1	tkuczens 02/29/2012	jdye 03/01/2012	phenry 03/01/2012	_____	mbarman 03/01/2012	lparisi 03/01/2012	

FE Sent For:

*at intro 3/5*

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1?	tkuczens	Pl 2/28 jld	 2/26	_____			

FE Sent For:

<END>

## Kuczenski, Tracy

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**From:** Grant, Peter  
**Sent:** Tuesday, February 21, 2012 2:42 PM  
**To:** Kuczenski, Tracy  
**Subject:** FW: School Districts Overpaying for Energy Services and Projects

Could you do this one? I think all he wants is to amend 121.91 (4) (o) 1. (as affected by the budget) to delete the phrase "the project is governed by a performance contract entered into under s. 66.0133." Thanks.

Peter

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**From:** Palese, Tony  
**Sent:** Tuesday, February 21, 2012 1:44 PM  
**To:** Grant, Peter  
**Subject:** FW: School Districts Overpaying for Energy Services and Projects

Hi Peter,

Here is some background information that was provided by our constituent.

Please feel free to let me know if you have any questions.

Thanks,

- Tony

**Tony Palese**  
Legislative Aide  
Office of Sen. Jennifer Shilling

State Capitol, Room 106 South  
PO Box 7882, Madison, WI 53707  
(608) 266-5490 office  
(800) 385-3385 toll-free  
(608) 282-3572 fax

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**From:** Paul Sampson [<mailto:paul.sampson@complete-control.com>]  
**Sent:** Tuesday, January 31, 2012 9:52 AM  
**To:** Darling, Alberta - Sen; Vos, Robin - Rep; DPI State Superintendent; Bormett, Michael R. DPI  
**Subject:** School Districts Overpaying for Energy Services and Projects

To: WI Senator Alberta Darling, Co-Chair, Joint Committee on Finance  
To: WI Representative Robin Vos, Co-Chair, Joint Committee on Finance  
To: State Superintendent Tony Evers, PhD, WI Dept. of Public Instruction  
To: Michael Bormett, Director, Policy and Budget Team for WI Dept. of Public Instruction

**The Purpose:** This e-mail is to alert you to the unintended consequences of a change in 2011 WI Act 32 provision 121.91(4) (o), to permit a school district to exceed their revenue limit for energy saving projects.

2/21/2012

**The Solution:** Remove the Energy Performance Contracting Provision of WI 32, 121.91(4)(o).

**The Problem:** Performance Contracting increases the cost to school districts and tax payers due to high interest, handling payments (as much as 15% above a project cost) and reduce competition.

**Background:** Municipalities , including school districts have authority to enter into performance contracts in accordance with 66.0133. Third party financing is the main premise of performance contracting with repayments being made from energy savings. With a performance contract, revenue limits are unaffected. The original revenue limit exemption for energy projects was created as an alternative for school districts to fund energy projects without a performance contract. The school districts and tax payers could reap the benefits of energy savings projects without paying higher third party interest and handling costs. This last June, the law was amended to include the requirement of performance contracting hence negating the original purpose of the law.

Performance contracting is not the same as requiring a performance bond during construction which is an insurance policy against poor or incomplete workmanship. But, providing services thru performance contracting does reduce a small firm's ability to provide construction performance bonds on other projects. The result is that only very large energy project providers offer performance contracting.

Clarification is also needed regarding if performance contracting is required when a school district obtains the extra funds via tax levy as opposed to bonds or notes.

Below is the excerpt from the WI Act 32 showing where the original wording was changed.

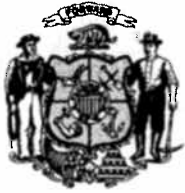
Prior to June, 2011, \$21,017,423 was spent by Wisconsin school districts under the original Revenue Limit Exemption provision. The penalty for Performance contracting at 15% financing , could have been \$3,152,613.

What can be done to reopen this discussion and potentially remove the provision from the law?

Thank you for your time.

Paul Sampson, P.E.  
Lead Engineer  
Complete Control, Inc.  
640 N. 25<sup>th</sup> Ave  
Wisconsin Rapids, WI 54494  
(715) 459-9157  
[paul.sampson@complete-control.com](mailto:paul.sampson@complete-control.com)

121.91 (4) (o) 1. If a school board adopts a resolution to do so, the limit otherwise applicable to a school district under sub. (2m) in any school year is increased by the amount spent by the school district in that school year on a project to implement energy efficiency measures, and renewable or to purchase energy efficiency products, that result including the payment of debt service on bonds or notes issued to finance the project, if the project results in the avoidance of, or reduction in, energy costs. ~~The department shall promulgate rules to implement this subdivision, including eligibility standards for school districts or operational costs, the project is governed by a performance contract entered into under s. 66.0133, and the bonds or notes issued to finance the project, if any, are issued for periods not exceeding 20 years. If a school board issues bonds or notes to finance a project described in this subdivision, a resolution adopted by a school board under this subdivision is valid for each school year in which the school board pays debt service on the bonds or notes.~~



State of Wisconsin  
2011 - 2012 LEGISLATURE



LRB-41652 P1

TKK:A:...

JLD RAR

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**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

2/22/12

soon

Gen

revenue limit for energy efficiency projects ✓

1

AN ACT ...; relating to:

***Analysis by the Legislative Reference Bureau***

Prior to the enactment of the 2011-13 biennial budget act, 2011 Wisconsin Act 32 (Act 32), the total amount of revenue per pupil that a school district could receive from general school aids and property taxes in any school year was limited to the amount of revenue increase allowed per pupil in the previous school year increased by the percentage change in the consumer price index. Act 32 decreased the revenue limit adjustment for the 2011-12 school year, provided a \$50 per pupil adjustment for the 2012-13 school year, and eliminated the per pupil adjustment for the 2013-14 school year and every school year thereafter.

Several exceptions to the revenue limit exist under current law. For example, if a school district adopts a resolution to initiate a project to implement energy efficient measures or purchase energy efficient products (energy efficiency project), the school district's revenue limit is increased by the cost of that project or products. This particular revenue limit exception was affected by Act 32; specifically, energy efficiency projects must be governed by a performance contract with a qualified provider. Current law defines a "performance contract" as a contract for the evaluation and recommendation of energy conservation and facility improvement measures, and for the implementation of one or more of these measures. Current law defines a "qualified provider" as a person who is experienced in the design, implementation, and installation of energy conservation and facility improvement measures and who has the ability to provide labor and material payment and performance bonds equal to the maximum amount of any payments due under a performance contract entered into by the person.

\*



This bill eliminates the requirement that energy efficiency<sup>✓</sup> projects be governed by a performance contract.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           SECTION 1. 121.91 (4) (o) 1.<sup>✓</sup> of the statutes, as affected by 2011 Wisconsin Act  
2 32, is amended to read:

3           121.91 (4) (o) 1. If a school board adopts a resolution to do so, the limit  
4 otherwise applicable to a school district under sub. (2m) in any school year is  
5 increased by the amount spent by the school district in that school year on a project  
6 to implement energy efficiency measures or to purchase energy efficiency products,  
7 including the payment of debt service on bonds or notes issued to finance the project,  
8 if the project results in the avoidance of, or reduction in, energy costs or operational  
9 costs, ~~the project is governed by a performance contract entered into under s.~~  
10 ~~66.0133,~~<sup>✓</sup> and the bonds or notes issued to finance the project, if any, are issued for  
11 periods not exceeding 20 years. If a school board issues bonds or notes to finance a  
12 project described in this subdivision, a resolution adopted by a school board under  
13 this subdivision is valid for each school year in which the school board pays debt  
14 service on the bonds or notes.

15           **History:** 1993 a. 16; 1995 a. 27 ss. 4108m to 4114, 9145 (1); 1997 a. 27, 113, 164, 237, 286; 1999 a. 9, 17, 19, 32, 182; 2001 a. 16; 2005 a. 25, 219; 2007 a. 1, 20; 2009 a. 28; 2011 a. 32, 75.  

(END)

**Kuczenski, Tracy**

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**From:** Palese, Tony  
**Sent:** Tuesday, February 28, 2012 5:02 PM  
**To:** Kuczenski, Tracy  
**Subject:** RE: Draft review: LRB 11-4165/P1 Topic: School district energy performance contracting

Hello Tracy,

Thank you for getting us this P-Draft of our energy efficiency levy exemption bill LRB 4165/P1. This looks good to us and we'd like to get a final version drafted and ready for introduction.

If you have any questions, feel free to let me know.

Thanks,

- Tony

**Tony Palese**  
Legislative Aide  
Office of Sen. Jennifer Shilling

State Capitol, Room 106 South  
PO Box 7882, Madison, WI 53707  
(608) 266-5490 office  
(800) 385-3385 toll-free  
(608) 282-3572 fax

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**From:** LRB.Legal  
**Sent:** Tuesday, February 28, 2012 10:28 AM  
**To:** Sen.Shilling  
**Subject:** Draft review: LRB 11-4165/P1 Topic: School district energy performance contracting

**Following is the PDF version of draft LRB 11-4165/P1.**



State of Wisconsin  
2011 - 2012 LEGISLATURE



LRB-4165/PT1

TKK:jld:jf

RMR

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

2011 BILL

2/28/12  
soon  
(no changes)

Regen

✓

1 AN ACT *to amend* 121.91 (4) (o) 1. of the statutes; **relating to:** revenue limit for  
2 energy efficiency projects.

***Analysis by the Legislative Reference Bureau***

Prior to the enactment of the 2011-13 biennial budget act, 2011 Wisconsin Act 32 (Act 32), the total amount of revenue per pupil that a school district could receive from general school aids and property taxes in any school year was limited to the amount of revenue increase allowed per pupil in the previous school year increased by the percentage change in the consumer price index. Act 32 decreased the revenue limit adjustment for the 2011-12 school year, provided a \$50 per pupil adjustment for the 2012-13 school year, and eliminated the per pupil adjustment for the 2013-14 school year and every school year thereafter.

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performance bonds equal to the maximum amount of any payments due under a performance contract entered into by the person.

This bill eliminates the requirement that energy efficiency projects be governed by a performance contract.

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8 results in the avoidance of, or reduction in, energy costs or operational costs, ~~the~~  
9 ~~project is governed by a performance contract entered into under s. 66.0133,~~ and the  
10 bonds or notes issued to finance the project, if any, are issued for periods not  
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13 subdivision is valid for each school year in which the school board pays debt service  
14 on the bonds or notes.

15

(END)

**Parisi, Lori**

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**From:** Palese, Tony  
**Sent:** Thursday, March 01, 2012 9:19 AM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB 11-4165/1 Topic: School district energy performance contracting

Please Jacket LRB 11-4165/1 for the SENATE.