

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 402 TEMPORARY ~~withdrawn~~ 12-1-83

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 11-22-83
DATE FOR REVIEW
DATE DUE 12-1-83

Adopted w/a hearing
Adopted w/o hearing
Temporary rule ✓

Approved ____ Disapproved ____ Returned to Agency ____

Resubmitted ____ Due ____
Approved ____ Disapproved ____ Returned to Agency ____

Date filed w/Secretary of State ____ Revisor approved 11.28.83 disapproved ____

✓ Rule as Adopted

✓ Rule as Proposed See SR

✓ Order Adopting 11.21.83 Date combined with FofF

____ Notice of Intent to Solicit Outside Opinion not submitted but see FofF — SR 8.8.83.

✓ Order for rulemaking
N/A date of Hearing

____ Certificate of Board's Authorizing Resolution not submitted

✓ Notice of rulemaking
✓ Sufficiency

✓ Affidavit of Mailing Notice or rulemaking
10.7.83 At least ~~30~~ 20 days prior to ~~hearing~~/adoption

✓ Mailing list Certificate

✓ Publication in State Register
10.17.83 At least ~~30~~/20 days prior to ~~hearing~~/adoption

N/A Hearing Examiner's Report

____ Chief Hearing Examiner's Report(s)
____ Approving H.E.'s Report
____ Approving agency action

✓ Agency's Findings of Fact combined with FofF

N/A LCRAR Report or agency Affidavit

✓ Certificate of Board's Resolution Adopting Rules

N/A Order Approving Incorporation by Reference

____ Statement of Need and Reasonableness

____ Petition for Adoption of a Rule

✓ Record (includes transcript or tape, exhibits, comments received by agency, requests for a hearing, and other relevant materials)

✓ Certificate of Compliance w/Rulemaking Procedures

N/A Affidavit of Mailing Notice of Submission to Attorney General

✓ Notice of Submission to the Attorney General

MINNESOTA DEPARTMENT OF ENERGY AND ECONOMIC DEVELOPMENT

980 AMERICAN CENTER BUILDING
150 EAST KELLOGG BOULEVARD
ST. PAUL, MINNESOTA 55101
(612) 296-6424

OFFICE OF THE COMMISSIONER

December 2, 1983

Martha Casserly
Office of the Attorney General
204 Administration Building
50 Sherburne Avenue
Saint Paul, Minnesota 55155

Dear Ms. Casserly:

I am withdrawing the temporary rules governing the administration of the Public School Energy Conservation Investment Loan Program, written pursuant to Minnesota Statutes 116J.37, that were submitted to your office for review on November 22, 1983.

The temporary rules will be resubmitted at a later date.

Sincerely,

Mark B. Dayton, Chairman
Energy and Economic Development Authority

SF-00006-03

DEPARTMENT ATTORNEY GENERAL

STATE OF MINNESOTA

Office Memorandum

TO: JUDITH WEHRWEIN
Attorney General's Office
Administration

DATE: November 22, 1983

FROM: CHRISTIE B. ELLER CBE
Special Assistant Attorney General

PHONE: 296-9200

SUBJECT: Proposed Temporary Rules for the Administration of the Public School Energy Conservation Investment Loan Program

Enclosed is my statement of compliance with rulemaking procedures with respect to the proposed temporary rules for energy conservation investment loans to public schools pursuant to Minn. Stat. § 116J.37.

After examining the proposed rules and rulemaking documents, it is my conclusion that proper rulemaking procedures have been followed and that the modifications made in the proposed rules, as adopted, are not substantially different from the proposed temporary rules as published at 8 State Register 674, October 17, 1983. The modifications were made in response to comments received and represented a consensus of the views of those submitting comments on the temporary rules as proposed. Most of the modifications are clearly nonsubstantative wording clarifications. While the modifications to 6 MCAR § 2.250A may appear extensive, they effectively limit the discretion of the authority in setting maximum loan amounts and better reflect statutory intent.

CBE/smo

Department of Energy and Economic Development
Energy Division

Adopted Temporary Rules for the Administration of the Public School Energy Conservation Investment Loan Program

Temporary Rules as Adopted

6 MCAR S 2.2500 [Temporary] Purpose.

The purpose of 6 MCAR SS 2.2500-2.2509 [Temporary] is to establish procedures for application by school districts for energy conservation investment loans, criteria for state agency review of loan applications, and procedures and guidelines for program monitoring, evaluation, and closure of loan account.

6 MCAR S 2.2501 [Temporary] Definitions.

A. Scope. For the purposes of 6 MCAR SS 2.2500-2.2509 [Temporary], the following terms have the meaning given them.

B. Authority. "Authority" means the Energy and Economic Development Authority.

C. Building. "Building" means an existing building owned and operated by a public school district for district purposes ~~but-not-rented-or-leased-to-private-for-profit-or-not-for-profit interest~~.

D. Maxi-audit. "Maxi-audit" means a detailed engineering analysis of energy-saving building improvements, including modifications to building structure; heating, ventilating, and air conditioning systems; operation practices; lighting; and other factors that relate to energy use. The purpose of a maxi-audit is to quantify the economic and engineering feasibility of energy-saving improvements or major operational modifications. A maxi-audit must be performed by or under the direction of a professional mechanical or electrical engineer or an architect registered in Minnesota. The minimum requirements for an approvable maxi-audit are given at Code of Federal Regulations, title 10, section 455.42 (May 21, 1981).

E. Payback. "Payback" means the average simple payback that

is equal to the design, acquisition, and installation costs of an energy saving building improvement divided by the estimated first year energy cost savings attributable to that measure.

~~E.~~ F. Project. "Project" means all proposed work in an application for a loan to a school district.

6 MCAR S 2.2502 [Temporary] Loan funds.

A. Use of loan~~;-loan-application-categories~~. A loan based on an approved loan application may be awarded by the authority to a school district to cover the costs of making energy conservation investments that are capital expenditures associated with conservation measures to improve the energy efficiency of an existing school building, to reduce the energy costs of existing school buildings, or both, and that have paybacks of ten years or less as specified in the approved maxi-audits. ~~There-are-three-loan-application-categories:~~

~~1.~~ Loans are available to school districts that have not previously received or been offered loan funds in this program~~;~~,

~~2.--loans~~ for new projects in school districts that previously received or ~~been~~ were offered loan funds through this program~~;~~, and

~~3.--loan-contract~~ as amendments for projects in progress that are experiencing cost overruns or for previously unidentified but related work necessary to successful implementation of a previously approved and funded project. Any additional work must be substantiated by engineering analysis and must meet loan program review criteria.

B. ~~Funding-priorities~~ Issuing of loan funds. Funds will be issued as loans on a first-come-first-served basis based on the date of loan application approval by the authority. ~~In-order-to achieve-a-more-equitable-and-fair-distribution-of-loan-funds-if loan-application-requests-exceed-available-funds,-the-authority may:~~

~~1.--limit-the-loan-amount-per-building-or-per-school district;~~

~~2.--approve-or-not-approve-loans-to-districts-that-have already-received-or-been-offered-loan-funds-through-this~~

~~program;-and~~

~~3.--approve-or-not-approve-amendments-to-increase-funds-to previously-approved-and-funded-projects.~~

C. Prior approval required. Except for a loan amendment to cover cost overruns or costs associated with previously unidentified but related work necessary to the successful implementation of a previously approved and funded project, loans may not be awarded retroactively. Loan projects may not be contracted for or begun prior to a school district's notification of the loan application's approval. This prior approval requirement applies to the design, acquisition, and installation costs as identified in the maxi-audit.

D. Existing buildings; new construction. Loans may be approved only for existing school district buildings and not for new construction, except if new construction is a necessary part of successful implementation of an energy conservation measure and is included in the approved application.

E. Loan repayment schedule. A loan repayment schedule based on the approved loan application must be attached to the loan contract that is sent to the school districts for signature.

6 MCAR S 2.2503 [Temporary] Application procedures.

A. Forms. All ~~prescribed-application~~ required forms~~,-report forms,-and-instructions-shall~~ must be prepared by and made available from the authority.

B. Submission. The authority shall begin to accept applications on the date these temporary rules become effective and shall continue to accept applications until these temporary rules expire or until permanent rules that replace these temporary rules expire.

C. Approval. The requirements of 6 MCAR SS 2.2504-2.2506 must be met by an applicant in order for the authority to approve an application. An applicant whose application is approved will be sent a loan contract with the loan repayment schedule to sign and return to the authority for signatures by state officials and for issuing of the loan.

D. Rejection and resubmission. An applicant whose

application is rejected will be given written notice of problems encountered in the review process and options available to correct them for resubmission of the application. If only certain of the measures included in the project are rejected or modified, the applicant may decide to accept a loan for the approved portions or resubmit the entire project proposal at a later date after making the necessary changes.

6 MCAR S 2.2504 [Temporary] Administrative criteria.

A. Required application contents. An application must be submitted to the authority on a form ~~prescribed by~~ prepared by and made available from the authority.

The application must contain at a minimum: the school district number; complete mailing address of school district including the county; contact person's name, title, and telephone number; project start and estimated completion dates; list of buildings included in the request and the dollar amount requested per building; name and address of each building; the total floor area in square feet for each building; original construction date for each building; and a summary description of each energy conservation measure, its estimated cost, its estimated annual energy cost savings, its estimated annual fuel and electric savings and the payback. The application must have an original, ink signature and date by the authorized official of the school district.

~~An application must also include~~ The following must be submitted with an application: an irrevocable resolution of the school board to annually levy or otherwise collect sufficient funds to guarantee loan repayment, a maxi-audit for each building involved in the project, and a ~~milestone chart to explain the~~ detailed timeline of project implementation~~, and the required assurances~~ showing the starting and ending dates of each energy conservation measure. The authority may request additional information if necessary to review an application. One copy of the application is required.

B. Review by authority. The authority shall examine the loan application to verify that the applicant is eligible, that

the required forms and reports are included and are correctly completed, that an irrevocable resolution of the school board ~~or~~ on school district ~~on~~ or school board letterhead is included, and that the ~~milestones~~ detailed timeline for ~~the~~ project ~~are~~ implementation is reasonable~~,-and-that-all-assurances-are attached~~.

6 MCAR S 2.2505 [Temporary] Technical criteria.

A. Contents of technical support materials. A technical review must be based on the maxi-audit submitted for each building included in a loan application. ~~A-maxi-audit,-defined in-Minnesota-Statutes,-section-116J.06,-subdivision-12-is-a detailed-engineering-analysis-of-energy-saving-building improvements,-including-modifications-to-building-structure, heating,-ventilating,-and-air-conditioning-systems;-operation practices;-lighting;-and-other-factors-that-relate-to-energy use.--The-purpose-of-a-maxi-audit-is-to-quantify-the-economic and-engineering-feasibility-of-energy-saving-improvements-that require-capital-expenditures-or-major-operational modifications.--The-maxi-audit-must-be-performed-by-or-under-the direction-of-a-professional-engineer-or-an-architect-registered in-Minnesota.~~ The maxi-audit must be submitted with the loan application on forms ~~prescribed-by~~ prepared by and made available from the authority.

B. Project eligibility limitations. Only energy conservation investments with ten year or less paybacks identified and described in ~~approved~~ maxi-audits are eligible. Loans may not be awarded to buildings with a remaining useful life less than the payback of the energy conservation investments proposed. Loans may not be awarded for energy conservation measures if the payback of the energy conservation investments proposed is greater than the life of the measure.

C. Review by authority. The authority shall examine a maxi-audit that accompanies a loan application to verify that energy conservation investments requested are analyzed with adequate details of the existing conditions and proposed changes using appropriate calculation procedures, and that the proposed

measures are eligible. The authority may accept, reject, or modify a loan application request as necessary based on this review.

6 MCAR S 2.2506 [Temporary] Financial criteria.

A. Maximum loan amount. ~~The authority shall establish a maximum loan amount for each school district based on information provided by the Department of Education. The maximum loan amount must be determined to ensure that factors 1., 2., and 3. will be sufficient to meet all interest and principal payments over the life of the loan. If more than one loan is awarded or if a loan amendment is awarded to a school district, the collective loan amounts may not exceed the maximum loan amount established by the following three criteria:~~

~~1. the entire amount of the Special Purpose Capital Expenditure Levy limitation over ten years; plus~~

~~2. 50 percent of the Capital Expenditure Levy limitation over ten years; plus~~

~~3. an amount equal to a three percent increase in overall school district levy limitation, based on the amount authorized in the previous year, over ten years.~~

~~The amount of 1. and 2. will be based on the levy authority for the school district for the year prior to the year in which the loan application is submitted~~ To assure equitable statewide distribution of loan funds, given loans will be issued on a first-come-first-served basis, the authority shall initially establish three equal allocations of the available funds to be divided between small, medium, and large school districts. Small districts are defined as having less than 900 students and four classroom buildings or less. Small districts are eligible for up to $250,000 per district. Large districts are defined as having greater than 5,000 students or greater than ten classroom buildings. Large districts are eligible for up to $1,000,000 per district. All other districts are defined as medium size school districts and are eligible for up to $500,000 per district. Cooperative vocational centers and any other eligible educational facilities not included in school districts are

limited to $250,000. If less than 33 percent of any of the three allocations is used within a year from the effective date of these rules, the authority may redistribute funds between the three allocations.

B. Guaranteed repayment. An irrevocable resolution of the school board must guarantee loan repayment.

~~C.--Additional-loan-amount-limitations.--If-none-of-the following-conditions-exist,-then-A.-determines-the-maximum-loan amount.--If-one-or-more-of-the-following-conditions-exist,-the loan-amount-may-be-less-than-the-amount-determined-by-A.-or-the request-may-be-denied,-as-determined-by-the-authority-on-a case-by-case-basis:~~

~~1.--a-negative-unappropriated-operating-fund-balance-that violates-the-"expenditure-limitations"-defined-in-Minnesota Statutes,-section-121.917;~~

~~2.--a-negative-capital-expenditure-fund-balance-that exceeds-the-deficit-limitations-in-Minnesota-Statutes,-section 121.911,-subdivision-5;~~

~~3.--a-high-relative-tax-burden-ranking-compared-to-the other-districts-in-the-state;-and~~

~~4.--declining-enrollment-trends-for-the-previous-three years-that-exceed-12-percent-per-year.~~

~~The-energy-expenditures-over-the-operating-budget-of-the school-district-will-be-used-to-identify-a-greater-or-lesser need-for-energy-conservation-capital-improvements.~~

6 MCAR S 2.2507 [Temporary] Reports and monitoring.

A. Annual project status report. The school district shall submit to the authority on forms ~~prescribed-by~~ prepared by and made available from the authority an annual project status report ~~and-financial-report~~ covering the period July 1 through June 30. These reports are due each July 31 until the project is completed. The project status report must indicate the progress of the implementation of the measures funded, problems encountered, the effect of the problems on the project, and the corrective action taken. ~~The-financial-status-report-must indicate-the-expenditures-of-the-loan-funds-through-June-30.~~ If

the school district has not demonstrated substantial progress towards completion of the project after 18 months, or anytime thereafter, the entire loan amount may become due and payable at the discretion of the authority.

B. Quarterly financial reports. Quarterly financial status reports that indicate expenditures of loan funds through the last date of each quarter are due within 30 days of the end of the quarter until the project is completed. These reports must be submitted to the authority.

C. Final report. Upon completion of the project, the school district shall submit to the authority on forms ~~prescribed by~~ prepared by and made available from the authority a final project status report and a financial status report that gives actual expenditures of the measures implemented. ~~A copy of the canceled liens by contractors or invoices from contractors may be required for contracted work~~ Proof of the bond or proof of payment of a claim by any person doing work or furnishing skill, tools, machinery, materials, insurance premiums, or equipment and supplies may also be required.

~~C.~~ D. Annual energy report. The school district shall submit to the authority on forms ~~prescribed by~~ prepared by and made available from the authority an annual energy use and energy expenditure report by fuel type for the duration of the loan contract period, or for a minimum of three years after project completion if the loan is prepaid in less than three years, unless the authority cancels this requirement prior to the end of the loan contract period.

6 MCAR S 2.2508 [Temporary] Program evaluation.

The authority shall design and implement an evaluation of the loan program. Loan recipients shall agree to provide to the authority in a timely manner the information that is reasonably needed to evaluate the loan program.

6 MCAR S 2.2509 [Temporary] Closure of loan account.

If the authority determines that the project that was approved for loan funds has been implemented, it shall authorize

closure of the loan account upon full repayment.

OFFICE OF THE REVISOR OF STATUTES

Adopted Rule

AR0426T

Agency: Department of Energy and Economic Development

Division: Energy Division

Agency Contact: Deborah Dyson 7-2103

Rule Numbers: 6 MCAR SS 2.2500-2.2509

Title: Adopted Temporary Rules for the Administration of the Public School Energy Conservation Investment Loan Program

Type of Rules: Temporary

Incorporations by Reference: None

Duplication of Statutory Language: None

The attached rules are approved as to form, subject to the following editorial changes:

Steven C. Cross
Revisor of Statutes

Maryanne V. Hruby
Assistant Revisor
Phone: 297-2948
Date: November 28, 1983

DEPARTMENT OF ENERGY AND ECONOMIC DEVELOPMENT

ENERGY DIVISION

Proposed Temporary Rules for the Administration of the

Public School Energy Conservation Investment Loan Program

Request for Public Comment

Notice is hereby given that pursuant to Minn. Stat. § 14.30 (1982), the Energy and Economic Development Authority is proposing the following temporary rules for the purpose of administering the public school energy conservation investment loan program. Authority for the adoption of these rules is contained in Minn. Stat. §116J.37 sec. 1 sub. 7. A copy of the proposed rules is attached to this notice.

Persons interested in these rules have 20 days from this publication to submit data and views on the proposed temporary rules in writing. Comments should be submitted to:

Marsha K. Battles

Energy Division

980 American Center Building

150 East Kellogg Boulevard

St. Paul, Minnesota 55101

(612) 297-3789

The proposed temporary rules may be modified if the modifications are supported by the data and views submitted to the Authority and do not result in a substantial change in the proposed language.

These proposed temporary rules, with modifications, if any, shall be submitted to the Attorney General for final approval as to form and legality. The temporary rules shall take effect immediately upon the Attorney General's approval.

These temporary rules shall then be effective for 180 days or until they are replaced by permanent rules, whichever occurs first.

Mark B. Dayton, Chairman
Energy and Economic Development
Authority

STATE OF MINNESOTA

ENERGY AND ECONOMIC DEVELOPMENT AUTHORITY

In the Matter of the Proposed Rules of the Energy and Economic Development Authority Relating to the Adoption of Temporary Rules for Energy Conservation Investment Loans, pursuant to Minn. Stat. 116J.37.

ORDER FOR NOTICE OF INTENT TO ADOPT TEMPORARY RULES AND FOR PUBLICATION OF TEMPORARY RULES

It is ordered this 28th day of September, 1983 that Notice of Intent to Adopt Temporary Rules and that the proposed temporary rules in the above-entitled matter be given to all persons who have registered their names with the State Department of Energy and Economic Development for the Energy and Economic Development Authority for that purpose and that Notice of Intent to Adopt Temporary Rules and the proposed temporary rules in the above-entitled matter be published in the State Register.

Mark B. Dayton, Chairman
Energy and Economic Development
Authority

In the Matter of the Proposed Adoption of Temporary Rules of the Energy and Economic Development Authority Governing the Administration of the Public School Energy Conservation Investment Loan Program (Temporary)

AFFIDAVIT OF MAILING

STATE OF MINNESOTA)
)
COUNTY OF RAMSEY)

Norma R. Ley, being first duly sworn deposes and says:

That on the 7 day of October, 1983, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Request for Public Comment and Proposed Temporary Rules by depositing in the State of Minnesota Central Mail System for United States mailing at said City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who have requested that their names be placed on file with the State Department of Energy and Economic Development for the Department and the Energy and Economic Development Authority for the purpose of receiving notice of the proposed adoption of rules by this Minnesota Department of Energy and Economic Development and the Energy and Economic Development Authority.

Norma Ley

Subscribed and sworn to before me
this 21 day of OCTOBER, 1983.

Dennis M. Devereaux
Notary Public

DENNIS M. DEVEREAUX
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires April 1, 1988

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

CERTIFICATE

In the Matter of the Proposed Adoption of Temporary Rules of the Energy and Economic Development Authority Governing the Administration of the Public School Energy Conservation Investment Loan Program (Temporary)

I hereby certify that the list of persons, associations and other interested groups who have requested, pursuant to Minnesota Statute 14.14 subd.1, that their names be placed on file with and maintained by the State Department of Energy and Economic Development for both the Department & Energy and Economic Development Authority for the purpose of receiving notice of the proposed adoption of rules by both the Energy and Economic Development Authority and the Department of Energy and Economic Development is accurate and complete as of 3:00 pm, this 3 day of October, 1983.

Jay Anderson

G. Blue, yellow, or white tags with the word "Primary Foundation" stamped across the front of the tag shall be issued only after all requirements of 3 MCAR § 1.0132 are met. In addition, the crop must be at leaast the third crop grown following the year in which bacterial ring rot was found before becoming eligible to be tagged with Primary Foundation tags.

3 MCAR § 1.0133 Requirements for ~~Approved~~ Foundation certified seed potato production.

~~Approved~~ Foundation certified seed potatoes ~~shall~~ consist of potatoes which meet all the requirements of 3 MCAR § 1.0130 and 3 MCAR § 1.0131 as well as the following additional requirements:

A. [Unchanged.]

B. A sample of the lot must meet the same winter test requirements as prescribed for Primary Foundation certified seed potatoes in 3 MCAR § 1.0132 E.

1. In selecting lots for winter testing, the commissioner shall consider factors such as lots more than two years removed from the Primary Foundation certified seed potato class, amount of disease found during field inspections, amount of varietal mixture rogued, proximity to fields having excessive amounts of disease, and other conditions which may jeopardize the value of the lots for certification planting.

2. If bacterial ring rot is found on the farm, before becoming eligible to submit a sample from future crops for winter testing, the grower ~~shall~~ must either:

a. Dispose of the crop from the year bacterial ring rot was found and purchase all new Primary Foundation certified or ~~Approved~~ Foundation certified seed potatoes; or

b. Produce at least two crops free from bacterial ring rot.

3 MCAR § 1.0135 Minnesota certified seed potato grades and tolerances.

A. Minnesota certified seed potato grades. Before potatoes are eligible for grading as certified seed potatoes, the requirements of 3 MCAR §§ 1.0130 and 1.0131 must be met. In addition, Primary Foundation certified seed potatoes must meet the requirements of 3 MCAR § 1.0132. ~~Approved~~ Foundation certified seed potatoes must meet the requirements of 3 MCAR § 1.0133. Grading and tagging or issuance of a bulk certificate are the final steps in the certification process.

1.-2. [Unchanged.]

3. Minnesota white tag certified seed potato grade.

a. Minnesota white tag certified seed potato grade ~~shall consist~~ consists of Primary Foundation certified or ~~Approved~~ Foundation certified seed potatoes which are graded according to agreement between the seller and the purchaser as to size and defects, except that not more than one-half percent of soft rot, frozen, or wet breakdown and two percent dry rot ~~shall be~~ is allowed.

b. [Unchanged.]

B.-D. [Unchanged.]

Department of Energy and Economic Development Energy Division

Proposed Temporary Rules for the Administration of the Public School Energy Conservation Investment Loan Program

Request for Public Comment

Notice is hereby given that pursuant to Minn. Stat. § 14.30 (1982), the Energy and Economic Development Authority is proposing the following temporary rules for the purpose of administering the public school energy conservation investment loan program. Authority for the adoption of these rules is contained in Minn. Stat. § 116J.37, § 1, subd. 7. A copy of the proposed rules is attached to this notice.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

Persons interested in these rules have 20 days from this publication to submit data and views on the proposed temporary rules in writing. Comments should be submitted to:

Marsha K. Battles
Energy Division
980 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101
(612) 297-3789

The proposed temporary rules may be modified if the modifications are supported by the data and views submitted to the authority and do not result in a substantial change in the proposed language.

These proposed temporary rules, with modifications, if any, shall be submitted to the Attorney General for final approval as to form and legality. The temporary rules shall take effect immediately upon the Attorney General's approval.

These temporary rules shall then be effective for 180 days or until they are replaced by permanent rules, whichever occurs first.

Mark B. Dayton, Chairman
Energy and Economic Development Authority

Temporary Rules as Proposed (all new material)

6 MCAR § 2.2500 [Temporary] Purpose.

The purpose of 6 MCAR §§ 2.2500-2.2509 [Temporary] is to establish procedures for application by school districts for energy conservation investment loans, criteria for state agency review of loan applications, and procedures and guidelines for program monitoring, evaluation, and closure of loan account.

6 MCAR § 2.2501 [Temporary] Definitions.

A. Scope. For the purposes of 6 MCAR §§ 2.2500-2.2509 [Temporary], the following terms have the meaning given them.

B. Authority. "Authority" means the Energy and Economic Development Authority.

C. Building. "Building" means an existing building owned and operated by a public school district for district purposes but not related or leased to private for profit or not-for-profit interest.

D. Payback. "Payback" means the average simple payback that is equal to the design, acquisition, and installation costs of an energy saving building improvement divided by the estimated first year energy cost savings attributable to that measure.

E. Project. "Project" means all proposed work in an application for a loan to a school district.

6 MCAR § 2.2502 [Temporary] Loan funds.

A. Use of loan; loan application categories. A loan based on an approved loan application may be awarded by the authority to a school district to cover the costs of making energy conservation investments that are capital expenditures associated with conservation measures to improve the energy efficiency of an existing school building, to reduce the energy costs of existing school buildings, or both, and that have paybacks of ten years or less as specified in the approved maxi-audits. There are three loan application categories:

1. loans to school districts that have not previously received or been offered loan funds in this program;

2. loans for new projects in school districts that previously received or been offered loan funds through this program; and

3. loan contract amendments for projects in progress that are experiencing cost overruns or for previously unidentified but related work necessary to successful implementation of a previously approved and funded project. Any additional work must be substantiated by engineering analysis and must meet loan program review criteria.

B. Funding priorities. Funds will be issued as loans on a first-come-first-served basis based on the date of loan application approval by the authority. In order to achieve a more equitable and fair distribution of loan funds if loan application requests exceed available funds, the authority may:

1. limit the loan amount per building or per school district;

2. approve or not approve loans to districts that have already received or been offered loan funds through this program; and

3. approve or not approve amendments to increase funds to previously approved and funded projects.

C. Prior approval required. Loans may not be awarded retroactively. Loan projects may not be contracted for or begun prior to a school district's notification of the loan application's approval.

D. Existing buildings; new construction. Loans may be approved only for existing school district buildings and not for new construction, except if new construction is a necessary part of successful implementation of an energy conservation measure and is included in the approved application.

E. Loan repayment schedule. A loan repayment schedule based on the approved loan application must be attached to the loan contract that is sent to the school districts for signature.

6 MCAR §2.2503 [Temporary] Application procedures.

A. Forms. All prescribed application forms, report forms, and instructions shall be available from the authority.

B. Submission. The authority shall begin to accept applications on the date these temporary rules become effective and shall continue to accept applications until these temporary rules expire or until permanent rules that replace these temporary rules expire.

C. Approval. The requirements of 6 MCAR §§ 2.2504-2.2506 must be met by an applicant in order for the authority to approve an application. An applicant whose application is approved will be sent a loan contract with the loan repayment schedule to sign and return to the authority for signatures by state officials and for issuing of the loan.

D. Rejection and resubmission. An applicant whose application is rejected will be given written notice of problems encountered in the review process and options available to correct them for resubmission of the application. If only certain of the measures included in the project are rejected or modified, the applicant may decide to accept a loan for the approved portions or resubmit the entire project proposal at a later date after making the necessary changes.

6 MCAR § 2.2504 [Temporary] Administrative criteria.

A. Required application contents. An application must be submitted to the authority on a form prescribed by the authority.

The application must contain at a minimum: the school district number; complete mailing address of school district including the county; contact person's name, title, and telephone number; project start and estimated completion dates; list of buildings included in the request and the dollar amount requested per building; name and address of each building; the total floor area in square feet for each building; original construction date for each building; and a summary description of each energy conservation measure, its estimated cost, its estimated annual energy cost savings, its estimated annual fuel and electric savings and the payback. The application must have an original, ink signature and date by the authorized official of the school district.

An application must also include an irrevocable resolution of the school board to annually levy or otherwise collect sufficient funds to guarantee loan repayment, a maxi-audit for each building involved in the project, a milestone chart to explain the timeline of project implementation, and the required assurances. The authority may request additional information if necessary to review an application. One copy of the application is required.

B. Review by authority. The authority shall examine the loan application to verify that the applicant is eligible, that the required forms and reports are included and are correctly completed, that an irrevocable resolution of the school board or school district on school board letterhead is included, that the milestones for the project are reasonable, and that all assurances are attached.

6 MCAR § 2.2505 [Temporary] Technical criteria.

A. Contents of technical support materials. A technical review must be based on the maxi-audit submitted for each building. A maxi-audit, defined in Minnesota Statutes, section 116J.06, subdivision 12 is a detailed engineering analysis of energy saving building improvements, including modifications to building structure; heating, ventilating, and air conditioning systems; operation practices; lighting; and other factors that relate to energy use. The purpose of a maxi-audit is to quantify the economic and engineering feasibility of energy saving improvements that require capital expenditures or major operational modifications. The maxi-audit must be performed by or under the direction of a professional engineer or an architect registered in Minnesota. The maxi-audit must be submitted with the loan application on forms prescribed by the authority.

B. Project eligibility limitations. Only energy conservation investments with ten year or less paybacks identified and described in approved maxi-audits are eligible. Loans may not be awarded to buildings with a remaining useful life less than the

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

payback of the energy conservation investments proposed. Loans may not be awarded for energy conservation measures if the payback of the energy conservation investments proposed is greater than the life of the measure.

C. Review by authority. The authority shall examine a maxi-audit that accompanies a loan application to verify that energy conservation investments requested are analyzed with adequate details of the existing conditions and proposed changes using appropriate calculation procedures, and that the proposed measures are eligible. The authority may accept, reject, or modify a loan application request as necessary based on this review.

6 MCAR § 2.2506 [Temporary] Financial criteria.

A. Maximum loan amount. The authority shall establish a maximum loan amount for each school district based on information provided by the Department of Education. The maximum loan amount must be determined to ensure that factors 1., 2., and 3. will be sufficient to meet all interest and principal payments over the life of the loan. If more than one loan is awarded or if a loan amendment is awarded to a school district, the collective loan amounts may not exceed the maximum loan amount established by the following three criteria:

1. the entire amount of the Special Purpose Capital Expenditure Levy limitation over ten years; plus

2. 50 percent of the Capital Expenditure Levy limitation over ten years; plus

3. an amount equal to a three percent increase in overall school district levy limitation, based on the amount authorized in the previous year, over ten years.

The amount of 1. and 2. will be based on the levy authority for the school district for the year prior to the year in which the loan application is submitted.

B. Guaranteed repayment. An irrevocable resolution of the school board must guarantee loan repayment.

C. Additional loan amount limitations. If none of the following conditions exist, then A. determines the maximum loan amount. If one or more of the following conditions exist, the loan amount may be less than the amount determined by A. or the request may be denied, as determined by the authority on a case-by-case basis:

1. a negative unappropriated operating fund balance that violates the "expenditure limitations" defined in Minnesota Statutes, section 121.917;

2. a negative capital expenditure fund balance that exceeds the deficit limitations in Minnesota Statutes, section 121.911, subdivision 5;

3. a high relative tax burden ranking compared to the other districts in the state; and

4. declining enrollment trends for the previous three years that exceed 12 percent per year.

The energy expenditures over the operating budget of the school district will be used to identify a greater or lesser need for energy conservation capital improvements.

6 MCAR § 2.2507 [Temporary] Reports and monitoring.

A. Annual report. The school district shall submit to the authority on forms prescribed by the authority an annual project status report and financial report. These reports are due each July 31 until the project is completed. The project status report must indicate the progress of the implementation of the measures funded, problems encountered, the effect of the problems on the project, and the corrective action taken. The financial status report must indicate the expenditures of the loan funds through June 30. If the school district has not demonstrated substantial progress towards completion of the project after 18 months, or anytime thereafter, the entire loan amount may become due and payable at the discretion of the authority.

B. Final report. Upon completion of the project, the school district shall submit to the authority on forms prescribed by the authority a final project status report and a financial status report that gives actual expenditures of the measures implemented. A copy of the canceled liens by contractors or invoices from contractors may be required for contracted work.

C. Annual energy report. The school district shall submit to the authority on forms prescribed by the authority an annual energy use and energy expenditure report by fuel type for the duration of the loan contract period unless the authority cancels this requirement prior to the end of the loan contract period.

6 MCAR § 2.2508 [Temporary] Program evaluation.

The authority shall design and implement an evaluation of the loan program. Loan recipients shall agree to provide to the authority in a timely manner the information that is reasonably needed to evaluate the loan program.

6 MCAR § 2.2509 [Temporary] Closure of the loan account.

If the authority determines that the project that was approved for loan funds has been implemented, it shall authorize closure of the loan account upon full repayment.

credits are intended to stimulate the growth and success of small businesses through encouragement of the transfer of technology to small businesses, equity investment in small businesses, and contributions to small business assistance offices.

Notice is hereby given that two public meetings will be held:

1) Monday, November 21, at the Business and Technology Center, 511 11th Avenue South, Minneapolis, commencing at 7:00 p.m. and continuing until all persons or representatives of associations or other interested groups have had an opportunity to be heard concerning development of the rule captioned above by submitting either oral or written data statements or arguments.

2) Tuesday, November 22, Business and Technology Center, 325 Lake Avenue (Meierhoff Building), Duluth, commencing at 1:00 p.m. and continuing until all persons or representatives of associations or other interested groups have had an opportunity to be heard concerning development of the rule captioned above by submitting either oral or written data statements or arguments.

Statements may be submitted without appearing at the meeting by sending them as follows:

Persons wishing to submit written comments on the question of the certification process should direct them to:

Charles A. Schaffer
Department of Energy and Economic Development
100 Hanover Building
480 Cedar Street
St. Paul, MN 55101

Persons wishing to submit written comments on the substnace and operation of the tax credits should direct them to:

Harriet Sims
Minnesota Department of Revenue
Centennial Office Building
PO Box 4336
St. Paul, Minnesota 55104

Errata

At *State Register*, Volume 8, Number 16, on October 17, 1983, p. 674, in Energy and Economic Development rules 6 MCAR § 2.2501 [Temp] C., change "related" to "rented."

STATE CONTRACTS

Pursuant to the provisions of Minn. Stat. § 16.098, subd. 3, an agency must make reasonable effort to publicize the availability of any consultant services contract or professional and technical services contract which has an estimated cost of over $2,000.

Department of Administration procedures require that notice of any consultant services contract or professional and technical services contract which has an estimated cost of over $10,000 be printed in the *State Register*. These procedures also require that the following information be included in the notice: name of contact person, agency name and address, description of project and tasks, cost estimate, and final submission date of completed contract proposal.

County of Anoka

Computer Applications Consultants Sought

Anoka County is seeking assistance in development of a long-range, comprehensive, data processing resources usage plan.

This plan should provide Anoka County with direction to meet its data processing needs for the next (4) four to (6) six years.

The study should determine if the County's data processing efforts are addressing and meeting current objectives and goals, and that proper direction is taken to maintain current systems and address future needs.

The study will address hardware, software and personnel needs and communications networks interfacing County departments with each other as well as other agencies and units of government.

STATE OF MINNESOTA

ENERGY AND ECONOMIC DEVELOPMENT AUTHORITY

In the Matter of the Proposed Adoption of the Temporary Rules of the Energy and Economic Development Authority Governing Energy Conservation Investment Loans to Public Schools pursuant to Minn. Stat. 116J.37.

FINDINGS OF FACT, CONCLUSIONS AND ORDER ADOPTING TEMPORARY RULES

1983 Laws of Minnesota Chapter 323 requires the Minnesota Energy and Economic Development Authority to adopt temporary rules pursuant to Minn. Stat. 14.29-14.36 of the Minnesota Administrative Procedures Act to establish procedures for application by school districts for energy conservation investment loans, criteria for state agency review of loan applications, and procedures and guidelines for program monitoring, evaluation and closure of loan accounts.

A Notice of Intent to Solicit Outside Opinion was published in the State Register on August 8, 1983. The Request for Public Comment and the Proposed Temporary Rules, 6 MCAR S 2.2500-2.2509, were published in the State Register October 17, 1983. Copies of the Request for Public Comment and the Proposed Temporary Rules 6 MCAR S 2.2500-2.2509 were also mailed by United States Mail to all persons on the list maintained by the Minnesota Department of Energy and Economic Development for the Department and the Energy and Economic Development Authority pursuant to Minn. Stat. 14.22.

After affording interested persons an opportunity to submit comments on the proposed temporary rules for 20 days after notice, receiving comments as attached, having considered all comments and views submitted during the comment period, I find the following:

FINDINGS

1. Both written and oral comments submitted to the Authority during the comment period suggested certain changes to the proposed temporary rules. The Authority believes that the proposed rules, as modified by these findings, are needed and reasonable and furthermore the Authority contends that the changes contained in these findings are not major substantive changes to the proposed temporary rules as published.

2. Recommended changes to proposed rules:

a. 6 MCAR S 2.2501 C.

Several comments were received concerning the definition of the word building. The proposed wording excluded all buildings owned and operated by the school district which are rented or leased out. Since energy costs and consumption in all buildings owned and operated by a school district affect the operating budget whether or not the building is rented or leased out, and the purpose of this loan program is, in part, to relieve stress on the operating budgets of school districts through energy conservation, the Authority proposes to broaden eligibility to include all district owned buildings. p. 1

b. 6 MCAR S 2.2501 F

Several comments were received suggesting that the definition of maxi-audit be moved from 2.2505 A Contents of technical support materials to 2.2501 (Definitions) F. It was also suggested that the definition include the information necessary to explain what the minimum requirements are for maxi-audit approval. The Authority proposes to define maxi-audit in the definitions and makes this change accordingly. p. 1

c. 6MCAR S 2.2502 A.

Several comments were received questioning the purpose of identifying "application categories." The intent of this section was to clarify that all three categories are eligible and not to set a priority on any one of the three categories. Therefore, the wording and paragraph structure changes are only to clarify the intent of this section. p. 2

d. 6 MCAR S 2.2502 B.

Several comments were received stating that Funding Priorities is inconsistent with the concept of first-come-first-served funding. Although there are several changes in this section, they are non-substantive and they serve only to clarify the primary purpose of this section. p. 2, 3

e. 6 MCAR S 2.2502 C. Prior Approval Required.

A comment received pointed out that if loan funds cannot be awarded retroactively it would exclude loan amendments which were intended to be included. The additional wording adds the appropriate exceptions to this requirement, and clarifies what costs are covered under this section.

f. 6 MCAR S 2.2503 A

A comment was received suggesting that the wording be simplified.

g. 6 MCAR S 2.2504 A

Several comments were received concerning wording in this section. The wording for "prescribed by" is modified to match wording changes in 2.2503 A. To more accurately describe a complete application, the sentence structure in paragraph 3 has been modified. Also in paragraph 3 the word "milestone" was not a descriptive or familiar term and is replaced by a descriptive phrase.

Another comment received pointed out that "required assurances" are the same as standard contract clauses and ought to be removed from the rules and application and placed in the loan contract.

h. 6 MCAR S 2.2504 B

A comment was received that it appeared to be an error in the position of the words "on" and "or" in the sentence. It is only the school board that can provide the resolution required by the program's legislation and not the school district. The other change in this section is, again, a replacement for the term "milestone." As in 2.2504 A, reference to assurances have been removed.

i. 6 MCAR S 2.2505 A

Several comments were received that suggested placing the definition of "maxi-audit" in the definitions section of 2.2501. In addition to placing the definition in this section, wording was added to clarify where the minimum requirements are stated for what constitutes an approvable maxi-audit and that only electrical or mechanical engineers may perform the work. The extraneous citation of state statutes has been removed.

Additional wording was added for clarity at the end of the first sentence and the same wording changes in 2.2502 and 2.2503 regarding forms preparation and availability was added to this section.

j. 6 MCAR S 2.2505 B

A comment was received that "approved" is unnecessary and therefore is removed.

k. 6 MCAR S 2.2506 A

Several comments were received pointing out that the purpose of establishing a maximum loan amount is not to determine whether or not a district can meet interest and principal payments, because with the new energy investment levy authority of Minn. Stat. 275.125 subd. 12a they have the authority to levy sufficient funds to repay the loan. Instead, the purpose is to equitably distribute the limited loan funds available so that small, large, wealthy and not wealthy districts can be assured that funds are available to them when they are ready to make energy conservation improvements. Although there are several changes to this section, they are non-substantive, they better meet the intentions of the legislation, and do not adversely affect any school district in the state. ✓p.6

l. 6 MCAR S 2.2506 C

Several comments were received that the Authority does not have express legislative authority to accept or reject a loan application based on the financial condition of the applicant and therefore this section has been removed. ✓p.7

m. 6 MCAR S 2.2507 A & B

The wording "prescribed by" is modified to match the wording changes regarding forms as given in previous sections of the rules. A comment was received requesting that financial status reports be quarterly and not annual. In order to accommodate this change the wording in section A was changed to discuss only the annual project status reports and a new section B was added that sets the requirements for quarterly financial status reports. Wording was added added to A to clarify the time period covered by the annual report. ✓p.7 ✓p.8

n. 6 MCAR S 2.2507 C

As a result of the addition of a new 2.2507 B, what was B has been changed and is now identified as C. The wording changes in the section regarding forms are the same as in previous sections. Additionally, one comment received suggested that the wording regarding the requirement for cancelled liens was inappropriate to school districts and suggested the wording that has replaced it. ✓p.8

o. 6 MCAR S 2.2507 D

This was previously numbered as 6 MCAR S 2.2507 C. The same wording change regarding forms is incorporated here. In addition, we received a comment requesting that the annual energy use and energy expenditure reports be required for a minimum of three years even if the loan is prepaid prior to that time. This is to facilitate the authority's evaluation of the program. Since we do not expect loans to be prepaid in less than three years, and since schools are currently submitting these reports annually we do not feel this is a major change.

Based on the foregoing findings, I make the following

CONCLUSIONS

1. The Authority gave proper notice of intent to adopt the proposed temporary rules.
2. The Authority has fulfilled the procedural requirements of Minn. Stat. 14.29 - 14.36 and all other procedural requirements of law or rule.
3. The Authority has statutory authority to adopt the proposed temporary rules and fulfilled all other substantive requirements of law or rule within the meaning of the Minnesota Administrative Procedures Act.

ORDER

NOW THEREFORE, IT IS ORDERED that these rules identified as temporary rules governing the administration of Energy Conservation Investment Loans to Public School Districts are adopted this 21st day of November, 1983, pursuant to authority vested in the Energy and Economic Development Authority by 1983 Laws of Minnesota chapters 323 and 289.

STATE OF MINNESOTA

MARK B. DAYTON, CHAIRMAN OF THE

ENERGY AND ECONOMIC DEVELOPMENT AUTHORITY

AUTHORITY #83-56

STATE OF MINNESOTA

ENERGY AND ECONOMIC DEVELOPMENT AUTHORITY

In the Matter of the Proposed Rules of the Energy and Economic Development Authority Relating to the Adoption of Temporary Rules for Energy Conservation Investment Loans, pursuant to Minn. Stat. 116J.37

CERTIFICATE OF AUTHORITY'S RESOLUTION ADOPTING RULES

I, Mark B. Dayton, do hereby certify that I am a member and the Chairman of the Energy and Economic Development Authority, an authority duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Authority, duly and properly called and held on the 16th day of November, 1983, that a quorum was present at said meeting, that a majority of those present voted for the resolution, and that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

"RESOLVED, that the rules relating to energy conservation investment loans to public school districts be and they hereby are approved and adopted, pursuant to authority vested in us by 1983 Laws of Minnesota Chapters 323 and 289 and that Mark B. Dayton, the Chairman of the Energy and Economic Development Authority, be and hereby is authorized to sign an order adopting these rules and further is authorized to perform the necessary acts to provide that these rules shall have the force and effect of law."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 21 day of November, 1983.

Mark B. Dayton, Chairman
Energy and Economic Development Authority

Lyn Burton
ATTEST

STATE OF MINNESOTA

In the Matter of the Proposed Adoption of the Temporary Rules of the Energy and Economic Development Authority Governing the Administration of the Public School Energy Conservation Investment Loan Program pursuant to Minn. Stat. 116J.37.

STATEMENT OF COMPLIANCE

WITH RULEMAKING PROCEDURES

I, Christie B. Eller, Special Assistant Attorney General, do hereby declare that I have examined the rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedures Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed. Any exceptions are noted below.

Christie B. Eller

Christie B. Eller, Special Assistant Attorney General

Dated: November 21, 1983