

123B.57 CAPITAL EXPENDITURE; HEALTH AND SAFETY.

Subdivision 1. **Health and safety revenue application.** (a) To receive health and safety revenue for any fiscal year a district must submit to the commissioner a capital expenditure health and safety revenue application by the date determined by the commissioner. The application must include a health and safety budget adopted and confirmed by the school district board as being consistent with the district's health and safety policy under subdivision 2. The budget must include the estimated cost of the program per Uniform Financial Accounting and Reporting Standards (UFARS) finance code, by fiscal year. Upon approval through the adoption of a resolution by each of an intermediate district's member school district boards and the approval of the Department of Education, a school district may include its proportionate share of the costs of health and safety projects for an intermediate district in its application.

(b) Health and safety projects with an estimated cost of \$500,000 or more per site are not eligible for health and safety revenue. Health and safety projects with an estimated cost of \$500,000 or more per site that meet all other requirements for health and safety funding, are eligible for alternative facilities bonding and levy revenue according to section 123B.59. A school board shall not separate portions of a single project into components to qualify for health and safety revenue, and shall not combine unrelated projects into a single project to qualify for alternative facilities bonding and levy revenue.

(c) The commissioner of education shall not make eligibility for health and safety revenue contingent on a district's compliance status, level of program development, or training. The commissioner shall not mandate additional performance criteria such as training, certifications, or compliance evaluations as a prerequisite for levy approval.

Subd. 2. **Health and safety policy.** To qualify for health and safety revenue, a school board must adopt a health and safety policy. The policy must include provisions for implementing a health and safety program that complies with health, safety, and environmental regulations and best practices including indoor air quality management.

Subd. 3. **Health and safety revenue.** A district's health and safety revenue for a fiscal year equals the district's alternative facilities levy under section 123B.59, subdivision 5, paragraph (b), plus the greater of zero or:

(1) the sum of (a) the total approved cost of the district's hazardous substance plan for fiscal years 1985 through 1989, plus (b) the total approved cost of the district's health and safety program for fiscal year 1990 through the fiscal year to which the levy is attributable, excluding expenditures funded with bonds issued under section 123B.59 or 123B.62, or chapter 475; certificates of indebtedness or capital notes under section 123B.61; levies under section 123B.58, 123B.59, 123B.63, or 126C.40, subdivision 1 or 6; and other federal, state, or local revenues, minus

(2) the sum of (a) the district's total hazardous substance aid and levy for fiscal years 1985 through 1989 under sections 124.245 and 275.125, subdivision 11c, plus (b) the district's health and safety revenue under this subdivision, for years before the fiscal year to which the levy is attributable.

Subd. 4. **Health and safety levy.** To receive health and safety revenue, a district may levy an amount equal to the district's health and safety revenue as defined in subdivision 3 multiplied by the lesser of one, or the ratio of the quotient derived by dividing the adjusted net tax capacity of

the district for the year preceding the year the levy is certified by the adjusted marginal cost pupil units in the district for the school year to which the levy is attributable, to \$2,935.

Subd. 5. Health and safety aid. A district's health and safety aid is the difference between its health and safety revenue and its health and safety levy. If a district does not levy the entire amount permitted, health and safety aid must be reduced in proportion to the actual amount levied. Health and safety aid may not be reduced as a result of reducing a district's health and safety levy according to section 123B.79.

Subd. 6. Uses of health and safety revenue. Health and safety revenue may be used only for approved expenditures necessary for the correction of fire and life safety hazards; design, purchase, installation, maintenance, and inspection of fire protection and alarm equipment; purchase or construction of appropriate facilities for the storage of combustible and flammable materials; inventories and facility modifications not related to a remodeling project to comply with lab safety requirements under section 121A.31; inspection, testing, repair, removal or encapsulation, and disposal of asbestos-containing building materials; cleanup and disposal of polychlorinated biphenyls; cleanup and disposal of hazardous and infectious wastes; cleanup, removal, disposal, and repairs related to storing heating fuel or transportation fuels such as alcohol, gasoline, fuel oil, and special fuel, as defined in section 296A.01; correction of occupational safety and health administration regulated hazards; indoor air quality inspections, investigations, and testing; mold abatement; upgrades or replacement of mechanical ventilation systems to meet American Society of Heating, Refrigerating and Air Conditioning Engineers standards and State Mechanical Code; design, materials, and installation of local exhaust ventilation systems, including required make-up air for controlling regulated hazardous substances; correction of Department of Health Food Code violations; correction of swimming pool hazards excluding depth correction; playground safety inspections, repair of unsafe outdoor playground equipment, and the installation of impact surfacing materials; bleacher repair or rebuilding to comply with the order of a building code inspector under section 326B.112; testing and mitigation of elevated radon hazards; lead testing; copper in water testing; cleanup after major weather-related disasters or flooding; reduction of excessive organic and inorganic levels in wells and capping of abandoned wells; installation and testing of boiler backflow valves to prevent contamination of potable water; vaccinations, titers, and preventative supplies for bloodborne pathogen compliance; costs to comply with the Janet B. Johnson Parents' Right to Know Act; automated external defibrillators and other emergency plan equipment and supplies specific to the district's emergency action plan; and health, safety, and environmental management costs associated with implementing the district's health and safety program including costs to establish and operate safety committees, in school buildings or property owned or being acquired by the district. Testing and calibration activities are permitted for existing mechanical ventilation systems at intervals no less than every five years.

Subd. 6a. Restrictions on health and safety revenue. Notwithstanding subdivision 6, health and safety revenue must not be used:

- (1) to finance a lease purchase agreement, installment purchase agreement, or other deferred payments agreement;
- (2) for the construction of new facilities, remodeling of existing facilities, or the purchase of portable classrooms;
- (3) for interest or other financing expenses;

(4) for energy-efficiency projects under section 123B.65, for a building or property or part of a building or property used for postsecondary instruction or administration or for a purpose unrelated to elementary and secondary education;

(5) for replacement of building materials or facilities including roof, walls, windows, internal fixtures and flooring, nonhealth and safety costs associated with demolition of facilities, structural repair or replacement of facilities due to unsafe conditions, violence prevention and facility security, ergonomics, or public announcement systems and emergency communication devices; or

(6) for building and heating, ventilating and air conditioning supplies, maintenance, and cleaning activities. All assessments, investigations, inventories, and support equipment not leading to the engineering or construction of a project shall be included in the health, safety, and environmental management costs in subdivision 8, paragraph (a).

Subd. 6b. Health and safety projects. (a) Health and safety revenue applications defined in subdivision 1 must be accompanied by a description of each project for which funding is being requested. Project descriptions must provide enough detail for an auditor to determine if the work qualifies for revenue. For projects other than fire and life safety projects, playground projects, and health, safety, and environmental management activities, a project description does not need to include itemized details such as material types, room locations, square feet, names, or license numbers. The commissioner may request supporting information and shall approve only projects that comply with subdivisions 6 and 8, as defined by the Department of Education.

(b) Districts may request funding for allowable projects based on self-assessments, safety committee recommendations, insurance inspections, management assistance reports, fire marshal orders, or other mandates. Notwithstanding subdivision 1, paragraph (b), and subdivision 8, paragraph (b), for projects under \$500,000, individual project size for projects authorized by this subdivision is not limited and may include related work in multiple facilities. Health and safety management costs from subdivision 8 may be reported as a single project.

(c) All costs directly related to a project shall be reported in the appropriate Uniform Financial Accounting and Reporting Standards (UFARS) finance code.

(d) For fire and life safety egress and all other projects exceeding \$20,000, cited under the Minnesota Fire Code, a fire marshal plan review is required.

(e) Districts shall update project estimates with actual expenditures for each fiscal year. If a project's final cost is significantly higher than originally approved, the commissioner may request additional supporting information.

Subd. 6c. Appeals process. In the event a district is denied funding approval for a project the district believes complies with subdivisions 6 and 8, and is not otherwise excluded, a district may appeal the decision. All such requests must be in writing. The commissioner shall respond in writing. A written request must contain the following: project number; description and amount; reason for denial; unresolved questions for consideration; reasons for reconsideration; and a specific statement of what action the district is requesting.

Subd. 7. Proration. In the event that the health and safety aid available for any year is prorated, a district having its aid prorated may levy an additional amount equal to the amount not paid by the state due to proration.

Subd. 8. Health, safety, and environmental management cost. (a) "Health, safety, and environmental management" is defined in section 123B.56.

(b) A district's cost for health, safety, and environmental management is limited to the lesser of:

- (1) actual cost to implement their plan; or
- (2) an amount determined by the commissioner, based on enrollment, building age, and size.

(c) The department may contract with regional service organizations, private contractors, Minnesota Safety Council, or state agencies to provide management assistance to school districts for health and safety capital projects. Management assistance is the development of written programs for the identification, recognition and control of hazards, and prioritization and scheduling of district health and safety capital projects. The commissioner shall not mandate management assistance or exclude private contractors from the opportunity to provide any health and safety services to school districts.

History: 1988 c 718 art 8 s 19; 1988 c 719 art 5 s 84; 1989 c 329 art 5 s 11-13; 1Sp1989 c 1 art 6 s 6; art 9 s 4; 1990 c 562 art 5 s 8; art 10 s 5; 1990 c 604 art 8 s 1,2; 1991 c 130 s 19,20; 1991 c 265 art 5 s 6; 1993 c 224 art 5 s 22-26; 1994 c 647 art 6 s 28; 1Sp1995 c 3 art 5 s 7; art 16 s 13; 1Sp1997 c 4 art 4 s 17,18; 1998 c 299 s 30; 1998 c 397 art 7 s 97,98,164; art 11 s 3; 1998 c 398 art 4 s 3; 1999 c 86 art 1 s 33; 1999 c 241 art 4 s 7,29; 2000 c 464 art 3 s 9; 2000 c 489 art 5 s 5,19,27; 1Sp2001 c 6 art 4 s 3-5; 1Sp2003 c 9 art 4 s 5-7; 2006 c 282 art 5 s 1; 2007 c 146 art 4 s 7; 2009 c 96 art 4 s 2; 1Sp2011 c 11 art 4 s 2