

To: Dr. Philip E. Geiger
Executive Director
Arizona School Facilities Board

December 11, 2000

Re: Excess Utility Savings

Questions Presented

You have asked the following questions regarding energy conservation measures and statutory limits on school district budgets:

1. May school districts qualify for the energy reduction adjustment in Arizona Revised Statutes ("A.R.S.") § 15-910.02 by reducing baseline utility budgets, reducing repair costs, and adopting new maintenance and operating strategies?
2. Does A.R.S. § 15-910.02 allow school districts to account for excess utility savings only in the first fiscal year after implementing the energy cost reduction program or can these savings be considered in future fiscal years as well?
3. Can school districts use the money saved as a result of the operational and energy savings (other than excess utility savings) for capital and soft capital purchases?
4. If a district saves capital money because, for example, energy savings measures reduce the need to replace capital equipment, can the district use the capital savings for other capital and soft capital items?
5. Can a school district reallocate savings generated as a result of energy and operational improvements to any part of a school district's Maintenance and Operation ("M & O") budget?

Summary Answer

1. Only those measures listed in A.R.S. § 15-910.02(A) qualify for the energy reduction adjustment. Those measures are: (1) employee training to reduce utility costs and (2) "the use of energy services consultants or other . . . energy specialists who advise the district and its employees on energy savings, conservation measures, or efforts to improve energy efficiency." A.R.S. § 15-910.02.
2. Under A.R.S. § 15-910.02, school districts may take the energy reduction adjustment in any future fiscal year in which the district qualifies.
3. If a school district realizes a savings in its M & O budget and those savings are outside the excess utilities portion of a school's budget, then the school district may budget those funds into the unrestricted capital outlay section of future budgets.
4. If a school district realizes a savings in its unrestricted capital budget (because of, for example, reduced equipment costs), then the district may budget those savings for other capital and soft capital items. 5. A school district that realizes a savings in the utilities subsection of its M & O budget because of energy and operational improvements may apply those funds to another M & O expenditure,

provided that the school district has not otherwise exceeded any other subsection of its M & O budget. The same is true for the energy reduction adjustment under A.R.S. § 15-910.02. If the savings are in excess utilities, and the district does not qualify for the energy reduction adjustment, then the district may not reallocate those savings for other M & O expenditures.

Background

The Legislature has established a complex school finance system. See A.R.S. Title 15, Chapter 9, Articles 3 and 4. As part of this system, the Legislature has limited the amounts school districts may allocate to certain portions of their budgets, including M & O. See A.R.S. § 15-947. The statutory limit on a school district's M & O budget is referred to as the general budget limit. The general budget limit for a school district is, in part, the sum of two budget formulas, known as the revenue control limit ("RCL") and the capital outlay revenue limit ("CORL"). A.R.S. § 15-947(C). The main factors in these formulas are the number of students in the school district and statutorily-established dollar amounts per student. See A.R.S. §§ 15-943 (base support level), -944 (base revenue control limit), -947(A) (revenue control limit), -961 (capital outlay revenue limit). A school district receives monies for its M & O budget from various sources, including State appropriations and county and local tax levies.

A school district's direct costs for heating, cooling, water, and electricity are utility costs that are part of a school district's general M & O budget. The M & O budget format includes two categories of utility costs: utility expenditures and "excess utility costs." A.R.S. § 15-910(A). Districts apply a statutory formula to determine an amount for utility expenditures; any additional expenditures for utilities are budgeted as excess utility costs. *Id.* Unlike the amount budgeted in the utility expenditure line, amounts budgeted as excess utility costs are outside the district's RCL. A.R.S. § 15-910. The exemption from the RCL permits districts to increase their general budget limit to pay for "excess utility costs." If a school district's expenditures for utilities in a fiscal year exceed the amount budgeted for utilities, the district can use the monies it budgeted for excess utility costs to cover the shortfall. See A.R.S. § 15-910(D) ("governing board may expend from the excess utility cost category only after it has expended for utility purposes the full amount budgeted in the utility expenditure line of the budget"). The district may only use property tax revenues within the school district to pay for these excess utility costs. The Legislature has also established incentives for school districts to reduce their utility costs. See A.R.S. § 15-910.02. If, through employee training and contracts with energy specialists, a district reduces its excess utility costs, the district may use one half of the savings to reduce property taxes in the school district and the other half to increase the district's general budget limit. A.R.S. § 15-910.02(A), (C), (E). This increased allowance in the M & O budget is an "energy reduction adjustment." A.R.S. § 15-910.02(C).

Analysis

A. Only Employee Training Regarding Reducing Utility Costs or the Use of Energy Specialists Under Contract with the District Qualify for the Energy

Reduction Adjustment.

A school district that adopts measures pursuant to A.R.S. § 15-910.02(A) and successfully reduces its excess utility costs, as described in statute, qualifies for the energy reduction adjustment. Section 15-910.02(A) applies to employee training regarding reducing utility costs and the "use of energy services consultants or other contractual arrangements with energy specialists who advise the district and its employees on energy savings, conservation measures, or efforts to improve energy efficiency." The statute also expressly excludes capital expenditures on energy saving equipment. *Id.*

Only those energy savings measures listed in A.R.S. § 15-910.02(A) qualify for the energy reduction adjustment. *See Pima County v. Heinfeld*, 134 Ariz. 133, 134, 654 P.2d 281, 282 (1982) (the expression of one or more items of a class in a statute indicates the Legislature's intent to exclude all items of the same class that are not expressed); *Roller Village, Inc. v. Superior Court*, 154 Ariz. 195, 199, 741 P.2d 328, 332 (App. 1987) (a statute setting forth the subject or things on which it is to operate will be construed as excluding from its effect those not expressly mentioned). Thus, the qualified measures must be for employee training or certain energy specialists under contract with the district as described in A.R.S. § 15-910.02(A).

The statute does not spell out what types of strategies a district might pursue in employee training or the use of energy specialists, except to exclude capital expenditures. In your opinion request you specifically asked whether reducing repair costs and baseline utility budgets and establishing new maintenance and operating strategies fall within A.R.S. § 15-910.02(A) and qualify for the energy adjustment reduction. Those specific strategies could, in theory, be part of employee training or addressed by energy specialists described by A.R.S. § 15-910.02(A); however, determining whether a specific program is within A.R.S. § 15-910.02(A) requires an analysis of the details of the program based on the statutory requirements.⁽¹⁾

B. School Districts May Use the Energy Reduction Adjustment Beyond the First Fiscal Year After Implementing the Energy Savings Measures.

Under A.R.S. § 15-910.02(C), a school district that adopts qualified measures to reduce utility costs "may include in its budget an energy reduction adjustment based on a reduction of excess utility costs in the fiscal years following the fiscal year of implementation." (Emphasis added.) Because A.R.S. § 15-910.02(C) uses the plural "years," school districts may take the energy reduction in any future fiscal year in which the school district qualifies for the adjustment and not just the first year following implementation of the energy saving measures. *Odle v. Shamrock Dairy of Phoenix*, 7 Ariz. App. 515, 518, 441 P.2d 1550, 1553 (1968) (in construing a statute, the Legislature is presumed to express its meaning as clearly as possible and, therefore, words are to be accorded their obvious and natural meaning).

C. If School District Realizes Operational Savings Outside of Excess Utilities,

the School District May Budget Those Savings for Capital Purchases.

You asked about a district's ability to budget operational and energy savings (other than utility savings) for capital expenditures.⁽²⁾ These savings would fall within the M & O section of the district's budget. A school district's governing board may budget amounts within the general budget limit into either the M & O or capital outlay section of the district's budget.⁽³⁾ A.R.S. § 15-905(F)(1). Therefore, if a school district realizes a savings in its M & O budget outside of excess utilities as a result of measures taken to reduce utility costs, that school district's governing board may reallocate those savings from the M&O budget into the capital outlay section of future budgets so that those funds can be used for capital purchases, including soft capital purchases.⁽⁴⁾

D. A District May Use Savings in Its Unrestricted Capital Budget for Other Capital Purchases.

Your opinion request also notes that a district's energy savings measures could reduce some capital costs, such as the costs of replacing certain equipment. A school district may use its unrestricted capital funds for any capital purpose set forth in A.R.S. § 15-903(C).⁽⁵⁾ Therefore, if a school district realizes a savings in its unrestricted capital budget as a result of energy savings measures, that school district's governing board may reallocate those savings so that they may be used for other capital and soft capital items.

E. A School District May Reallocate Savings in the Utilities Section of Its Budget and the Energy Adjustment Under A.R.S. § 15-910.02 to Any Part of the School District's M & O Budget.

A district's ability to reallocate savings generated as a result of energy savings measures to other parts of the school's M & O budget depends on whether the savings are in utilities or excess utilities and whether the district qualifies for the energy adjustment under A.R.S. § 15-910.02.

Generally, school districts may use their M & O monies for any properly approved M & O expenditure so long as the district has not exceeded any other subsection of its overall M & O budget limit. A.R.S. § 15-905(G).⁽⁶⁾ Therefore, subject to governing board approval and applicable budget limits, districts may reallocate M & O savings in utilities (as opposed to excess utilities) for other M & O expenditures.

If the savings are in excess utilities and the district qualifies for the energy reduction adjustment under A.R.S. § 15-910.02, the district may spend only a half of the savings. The district must use the other half of the savings to reduce district property taxes. A.R.S. § 15-910.02. The portion the district may spend is subject to the same restrictions as set forth in A.R.S. § 15-905(G) for other M & O expenditures, which means those savings may be reallocated subject to governing board approval and applicable budget limits.

If the savings are in excess utilities and the district does not qualify for the energy

reduction adjustment under A.R.S. § 15-910.02, the district cannot reallocate those savings to other M & O expenditures. Because excess utilities are outside the district's RCL, savings in excess utilities that do not qualify under A.R.S. § 15-910.02 reduce local property taxes but do not create savings that a district may reallocate for other uses.

Conclusion

Under A.R.S. § 15-910.02(A), reductions in utility costs resulting from employee training and the use of certain energy consultants qualify for the energy reduction adjustment and corresponding tax decrease. School districts may take the energy reduction adjustment provided by A.R.S. § 15-910 in all future fiscal years in which the district qualifies.

If a school district realizes a savings in its M & O budget (other than excess utility savings), then it may use those funds for capital purchases. In addition, if a school district realizes a savings in its unrestricted capital budget, then it may use those funds for other capital purchases.

School districts may use their energy adjustment monies under A.R.S. § 15-910.02 for any M & O expenditure, provided that such expenditure is approved by the school district's governing board and the district has not exceeded its overall budget limit. A.R.S. § 15-905(G). It may also use savings in the utilities subsection in this manner. If the district's savings are in excess utilities, but the district does not qualify for the energy adjustment under A.R.S. § 15-910.02, then the district may not reallocate those savings for other M & O expenditures.

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1. Section 15-910.02(A), A.R.S., specifically prohibits school districts from including a capital expenditure as an energy savings measure. Repair costs may be a capital expenditure depending on the nature of the repair. See A.R.S. § 15-2031(B), (C) (building renewal funds may be used major renovations and repairs, but not routine maintenance).
2. Savings within excess utilities through measures under A.R.S. § 15-910.02 are subject to the requirements in that statute.
3. The capital outlay section of the budget includes separate subsections for unrestricted capital and soft capital. A.R.S. § 15-903(C).
4. "Soft capital purchases" include the items described in A.R.S. § 15-962 ("short term capital items that are required to meet academic standards"). Although the district may spend capital savings on soft capital purchases, such moneys are obviously not part of the soft capital allocation fund described in A.R.S. § 15-962.
5. In contrast, other capital funds may only be used for the purposes set forth in statute. See A.R.S. §§ 15-962 (districts must use monies received for soft capital under this section for "short-term capital items that are required to meet academic adequacy standards such as technology, textbooks, library resources, instructional aids, pupil transportation vehicles, furniture and equipment"); -2021(F) (Deficiencies Correction Fund monies may only be used to correct stated deficiencies); -2031 (Building Renewal Fund monies may only be used for major renovations and repairs,

upgrading systems and areas that will maintain the useful life of a building, for infrastructure costs or relocation and placement of portable or modular buildings).

6. This statutory provision, however, must be read in conjunction with other statutes that require districts to use certain monies for designated purposes.

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