

CR 82-124

CERTIFICATE

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STATE OF WISCONSIN)
MINING INVESTMENT AND LOCAL IMPACT FUND BOARD) SS

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Gwinn Johnson, Acting-Chairperson of the Mining Investment and Local Impact Fund Board and custodian of the official records of said board, do hereby certify that the repeal and recreation of Chapter Tax 13 relating to the distribution of funds generated by the net proceeds tax to municipalities for mining impacts, was duly approved and adopted by this board on July 23, 1982.

I further certify that said copy has been compared by me with the original on file with this board and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand at 125 South Webster Street in the City of Madison, this 11 day of Sept. A.D. 1982.

Gwinn E. Johnson, acting Chairperson
(Officer)

12-1-82

ORDER OF THE State of Wisconsin Investment and Local Impact Fund Board to repeal and recreate Chapter Tax 13 pertaining to the distribution of the net proceeds occupation tax to municipalities for metalliferous mining impacts.

Analysis Prepared by the Investment and Local Impact Fund Board:

The Investment and Local Impact Fund Board proposes to repeal and recreate Chapter Tax 13 to comply with Chapter 86, Laws of 1981. More specifically, the rules are being revised to allow the Board to make specific guaranteed payments during mine construction and the mine permit process to certain municipalities which contain a mining site. In addition, the rules incorporate the new distribution scheme for the net proceeds occupation tax to certain municipalities in which metalliferous minerals are extracted, pursuant to ss. 70.395 to 70.396, Stats. As proposed, the major rule revisions would mean that:

1. Cities, villages, and towns where a metallic mineral deposit is located, and for which a mining company has submitted a mine permit application, would each receive \$100,000 annually during the mine permit process under s. Tax 13.06 (3). A Native American Community located within one or more cities, towns, or villages which receive a permit period payment would also receive \$100,000 annually during the permit process. These payments would be made from the investment and local impact fund.
2. Cities, villages, and towns that contain a mining site for which a mine permit has been granted and where construction for the mine operation has begun, would each receive \$100,000 annually during the construction period under s. Tax 13.06 (2). A Native American Community located within one or more cities, villages, or towns which receive a construction period payment would also receive \$100,000 annually during construction. These payments would be made from a construction fee paid by the mining company under s. Tax 13.05 (2).
3. Counties, cities, villages, and towns where metallic minerals are extracted would each receive \$100,000 annually under s. Tax 13.06 (1). A Native American Community located within one or more cities, villages, or towns which receive a first dollar payment would also receive \$100,000 annually.

4. A project reserve fund would be established in relation to each mine and would consist of 10 percent of the net proceeds tax collected from that mine. The project reserve fund would be used to reimburse municipalities for costs associated with the cessation of mining operations and reclamation expenses under s. Tax 13.06 (4).

The other major revision to the Board's rules is one of an organizational nature. Substantive and procedural changes have been made only in response to the legislative revisions adopted in November, 1981.

Pursuant to the authority vested in the State of Wisconsin Investment and Local Impact Fund Board by ss. 70.395 (2) (c) and 227.014 (2)(a), Stats., the State of Wisconsin Investment and Local Impact Fund Board hereby repeals and recreates rules interpreting ss. 70.395 to 70.396, Stats., as follows:

Chapter Tax 13 is repealed and recreated to read:

Department of Revenue

Chapter Tax 13

Investment and Local Impact Fund

13.01 Purpose	13.07 Discretionary Payments
13.02 Scope	13.08 Expenditures
13.03 Definitions	13.09 Audits
13.04 Severability	13.10 Investments
13.05 Transfer of Taxes, Funds, and Fees	13.11 Exceptions
13.06 Direct Payments	

Tax 13.01 PURPOSE. The purpose of this chapter is to establish standards and procedures for the issuance of funds generated by a net proceeds occupation tax to municipalities for costs associated with social, educational, environmental, and economic impacts of metalliferous mineral mining incurred prior to, during, and after extraction of metalliferous minerals.

Tax 13.02 SCOPE. Pursuant to s. 70.395(2)(c), Stats., the provisions of this chapter shall govern the distribution and use of net proceeds occupation tax monies.

Tax 13.03 DEFINITIONS. (1) "Board" means investment and local impact fund board.

(2) "Certify" or "Certification" means filing with the department of administration a written confirmation of specific transfers, payments, or investments to be made by the department of administration.

(11) "Mining site" means the location of:

(a) a metalliferous mineral deposit for which a mine permit application is filed pursuant to s. 144.85, Stats.,

(b) the concentrator, and

(c) the surface area covered by the tailings disposal pond.

(12) "Municipality" means any county, city, village, town, or school district. Pursuant to s. 20.002(13), Stats., this definition also includes any federally recognized tribal governing body.

(13) "Native American community" means a federally recognized tribal governing body.

(14) "Nonshared costs" means the amount of the school district's principal and interest payments on the long-term indebtedness and annual capital outlay for the current school year which is not shared under s. 121.07(6)(a), Stats., or other nonshared costs, and which is attributable to enrollment increases resulting from the development of metalliferous mineral mining operations.

(15) "Permit period payment" means an amount equal to \$100,000 for each city, village, town, or Native American community eligible to receive a payment under s. 70.395(2)(d)(5), Stats., during the mine permit period.

(16) "Person" means a sole proprietorship, partnership, association, or corporation and includes a lessee engaged in mining metalliferous minerals.

(17) "Project fiscal year" means a twelve-month time period which begins on the date a city, village, town, or Native American community first receives a payment under s. Tax 13.06(2) or (3).

(18) "Project reserve fund" means an amount equal to 10% of the net proceeds tax paid by each mine plus all accrued interest.

(19) "Tax" means the net proceeds occupation tax imposed on persons engaged in mining metalliferous minerals in this state.

b. When the balance in the impact fund is below \$20 million on any January 1.

(2) WASTE MANAGEMENT FUND. Prior to the beginning of a fiscal year, the board shall certify to the department of administration for payment from the impact fund any sum necessary for the department of natural resources to make payments under s. 144.441(3)(g)4 and 5, Stats., for the long term care of mining waste sites, if monies in the waste management fund are insufficient to make complete payments during that fiscal year. This sum may not exceed the balance in the waste management fund at the beginning of that fiscal year or 50 percent of the balance in the impact fund at the beginning of that fiscal year, whichever amount is greater.

(3) CONSTRUCTION FEE. Each year a person who engages in construction shall pay a construction fee to the department of revenue equal to an amount sufficient to make all the construction period payments that year under s. Tax 13.06(2). The person shall pay the construction fee on a project fiscal year basis for each year construction continues at that site up to 3 years after the production of concentrates begins. This fee shall be used exclusively by the board to make construction period payments.

(a) Any person intending to begin construction shall notify the board by registered mail 90 days prior to the time construction begins. This written notice of intent shall include:

1. The name and address of the person intending to begin construction.
2. A map showing the location of the metallic mineral deposit, tailings pond, concentrator, and related facilities.

(b) Within 45 days after the receipt of the written notice of intent to begin construction, the board shall notify the department of revenue and give written public notice listing the cities, villages, towns, and Native American communities to receive construction period payments.

(b) Cities, villages, and towns. Each city, village, and town in which metalliferous minerals are extracted, or which contain at least 15 percent of that ore body, shall receive a first dollar payment.

(c) Native American communities. Each Native American community located within one or more cities, villages, or towns which receive a first dollar payment shall also receive a first dollar payment.

(d) Exceptions.

1. Where the tax collected is in respect to a mine located in more than one county each county's first dollar payment shall be equal to the ratio of the amount of crude ore extracted from the mine in that county to the total amount of crude ore extracted from the mine that year multiplied by the amount of the payment under s. Tax 13.06(1)(a)1.

2. If a first dollar payment is made within a project fiscal year in which a city, village, town, or Native American community receives a construction period payment, the first dollar payment shall be reduced proportionately to correspond to the time remaining in the project fiscal year.

3. The dollar amounts in this subsection shall be indexed beginning in calendar year 1983 and corresponding fiscal years. The revised amounts shall be rounded to the nearest whole number divisible by 100. First dollar payments shall not be reduced below \$100,000. When the \$250,000 figure under s. Tax 13.06(1)(a)2 is indexed, the amount shall not be reduced below \$250,000.

(2) CONSTRUCTION PERIOD PAYMENTS. Certain cities, villages, towns, and Native American communities that contain a mining site for which a mine permit has been granted under s. 144.85, Stats., shall receive annual payments during the time persons are engaged in construction at that site. The board shall certify to the department of administration the specific construction period payments to be made under s. 70.395(2)(d)5, Stats. These payments shall be made within 30 days after construction begins. For each year construction continues

(c) Any person filing a mine permit application to the department of natural resources under s. 144.85, Stats., shall notify the board by registered mail within 7 days after the mine permit application has been filed. The notification shall include a map showing the location of the metallic mineral deposit, and the proposed location of the concentrator and tailings disposal pond.

(d) The board shall certify to the department of administration the specific payments to be made under s. 70.395(2)(d)(5), Stats. The following municipalities shall receive permit period payments:

1. Cities, villages, and towns. Each city, village, and town that contains a mining site for which a mine permit application is submitted prior to January 1, 1986.

2. Native American communities. Each Native American community located within one or more cities, villages, or towns which receive a permit period payment.

(4) PROJECT RESERVE FUND. The board shall establish and maintain a project reserve fund within the impact fund in relation to each mine which first begins operation after November 27, 1981. Each project reserve fund shall consist of 10 percent of the net proceeds tax paid by each mine plus all accrued interest on that amount. For municipalities that contain a mining site and for which a project reserve fund has been established, the board shall withdraw monies from that specific fund to be used for the following purposes:

(a) To ensure an annual payment to each city, village, and town in an amount equal to the average first dollar payment made to that municipality for the 3 previous years.

(b) To reimburse municipalities for costs associated with the cessation of mining operations.

mineral mining and if the board and the school board of the school district reach an agreement on a payment schedule, the board shall certify to the department of administration for payment to the school district an amount equal to all or part of the nonshared costs of the school district in the year in which the initial agreement was reached. The board and the school district may, by mutual consent, modify the provisions of the agreement at any time. The payment shall be considered a nondeductible receipt for the purposes of s. 121.07(6), Stats.

(2) DISCRETIONARY PAYMENT PROGRAM. The annual discretionary payment program includes the following procedures:

(a) Application process. Municipalities shall submit written applications to the board by July 31 in order to receive funding consideration. A municipality may submit more than one application. Two or more municipalities may submit a joint application. Each application shall be accompanied by a supporting resolution from the appropriate local governing body or bodies. An application may take one of two forms:

1. 'Project proposal'. A municipality which needs a specific amount of financial assistance to undertake the design, construction, or maintenance of a particular public service or facility may submit a project proposal to the board. The appropriate form will be furnished by the board upon request. Information to be provided on the form includes:

a. A general description of the proposed project and its relationship to the applicant's strategy for addressing its mining-related impacts,

b. A detailed description of the proposed project elements and their estimated costs, and

c. An indication of what portion of total project costs is being requested of the board, what portion is being committed by the applicant, and what portion is coming from other sources.

a. Local and regional development plans, addressing such topics as land use patterns, transportation services, housing needs, outdoor recreation facilities, and economic growth,

b. Zoning ordinances and other land use controls,

c. Coordination of planning activities with neighboring jurisdictions, and

d. Participation in state and federal community assistance programs.

3. The extent to which the applicant will effectively use any mining impact funds. Consideration shall be given to such factors as:

a. The relationship of applicant's strategy to the impacts described,

b. The likelihood that this strategy will accomplish its stated purpose, and

c. The reasonableness of any proposed project expenses.

4. The extent to which the applicant has received any payments under s. Tax 13.06.

5. In addition, the Board shall give consideration to the geographic location of each applicant with respect to mineral development on the basis of the following 3 distribution priorities:

a. Distribution shall first be made to those municipalities with active metalliferous mining sites or with metalliferous mining sites that were active within 3 years previous to December 31 of the current year, or to those municipalities in which a permit has been issued under s. 144.86, Stats., to commence mining.

b. Distribution shall next be made to those municipalities adjacent to municipalities in which metalliferous minerals are extracted or were extracted more than 3 years, but less than 7 years previous to December 31 of the current year.

(3) EMERGENCY PAYMENTS. A portion of the emergency reserve monies invested with the state investment board, or a portion of any other discretionary funds available to the board, may be withdrawn and distributed by the board, at any time, to any municipality which demonstrates its need for financial assistance in alleviating a mining-related cost which is deemed by the board to be sudden and unforeseeable. The policies and procedures presented in s. Tax 13.07(2)(b), shall apply to the distribution and use of emergency reserve monies, except for the specified deadline dates.

Tax 13.08 EXPENDITURES. Except for any first dollar payments to a city, village, town, or Native American community, any and all funds distributed to a municipality by the board shall be used for costs associated with metalliferous mining impacts.

(1) PURPOSES. Funds to be used for metalliferous mining impacts may be applied towards the following purposes.

(a) Protective Services, such as police and fire services associated with the construction and operation of the mining facility.

(b) Highways, as defined in s. 990.01(12), Stats., repaired or constructed as a consequence of the construction and operation of the mining facility.

(c) Studies and projects for local development.

(d) Monitoring the effects of the mining operation on the environment.

(e) Extraordinary community facilities and services provided as a result of mining activity.

(f) Legal counsel and technical consultants to represent and assist municipalities appearing before state agencies on matters relating to metalliferous mineral mining.

(c) For metalliferous mining related purposes as defined by the board, in addition to those listed in s. Tax 13.08(1).

(3) EXPENDITURE REPORTS.

(a) Any municipality which receives a payment or grant under this chapter shall file an expenditure report with the board by March 1 of the year following the year that the funds are received. This expenditure report shall be on forms prepared and furnished by the board. A county's expenditure report shall include information regarding the use of any funds distributed by the county under s. Tax 13.08(2)(b).

(b) Any city, village, town, or Native American community which receives a first dollar payment shall not file an expenditure report for that payment.

(c) The board's staff may make on-site visits over the course of any year and otherwise monitor the use of permit period payments, construction period payments, and discretionary payments by municipalities. Staff shall keep the board informed of its activities and findings in this regard. From the monitoring activities, the completed expenditure reports, and the auditing procedure outlined in s. Tax 13.09, the board shall determine whether municipalities have applied their funds to the purposes authorized in s. Tax 13.08(1).

Tax 13.09 AUDITS. (1) All funds received from the board shall be placed in a segregated account. The board may require financial audits of the recipients of payments under s. 70.395(2)(d) through (g), Stats. The financial audit may be conducted as part of a municipality's annual audit, if one is conducted. The costs of the audits shall be paid by the board from the appropriation under s. 20.566(7)(a), Stats.

(2) If the board has evidence based on information from an audit that a municipality has not used all of a discretionary or emergency payment appropriately, the board shall hold a hearing on the matter. If the board determines

(2) Each city, town, or village in which metalliferous minerals are extracted shall receive 10% of the tax collected under ss. 70.38 to 70.39, Stats., from persons extracting metalliferous minerals in that city, town, or village. The maximum payment which may be received by a city, town, or village in any one year is \$75,000.

(3) Where the tax under s. 70.37 to 70.39, Stats., is in respect to a mining site which is located in more than one county or city, town, or village, the apportionment shall be as follows:

(a) Each municipality's proportion of the amount determined under subs. (2) shall be equal to the ratio of the amount of crude ore extracted from the mine in that municipality to the total amount of crude ore extracted from the mine multiplied by the amount determined under subs. (2).

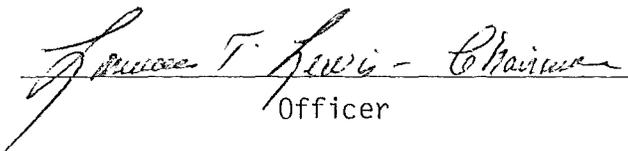
(b) Each county's proportion of the amount determined under subs. (1) shall be equal to the ratio of the amount of crude ore extracted from the mine in that county to the total amount of crude ore extracted from the mine multiplied by the amount determined under subs. (1).

(4) Payments to counties, cities, villages, and towns under this section shall have priority over the payments made in s. Tax 13.06(5).

The rules, amendments, and repeals contained in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register pursuant to authority granted by s. 227.026 (1) (intro.), Stats.

Dated July 23, 1982

Investment and Local Impact Fund Board



Officer



State of Wisconsin \ MINING INVESTMENT AND LOCAL IMPACT FUND BOARD

LEE SHERMAN DREYFUS
Governor

LAURENCE LEWIS
Chairman

ELIZABETH KOHL
Executive Secretary

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September 15, 1982

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SEP 15 1982

Revisor of Statutes
Bureau

Mr. Gary Poulson
Office of Revisor of Statutes
411 West
State Capitol
Madison, WI 53702

Dear Mr. Poulson:

Pursuant to s. 227.023 (1), Stats., the Mining Investment and Local Impact Fund Board hereby files the enclosed administrative rules with the Office of Revisor of Statutes. An additional copy of the rules is being filed with your office to be used for printer's copy.

Please feel free to contact me if questions arise regarding the rules or their publication.

Sincerely,

A handwritten signature in cursive script that reads 'Elizabeth Kohl'.

Elizabeth Kohl
Executive Secretary

EK/kb
Enclosures