

CR 85-116

CERTIFICATE

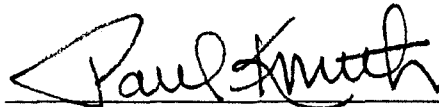
STATE OF WISCONSIN )  
MINING INVESTMENT AND LOCAL IMPACT FUND BOARD) SS

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Paul Knuth, 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 13.07 through 13.09 relating to the distribution of discretionary funds generated by the net proceeds tax to municipalities for mining impacts, was duly approved and adopted by this board on September 20, 1985.

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 12<sup>th</sup> day of DECEMBER A.D. 1985.



Chairperson

RECEIVED

DEC 16 1985  
3:55pm  
Revisor of Statutes  
Bureau

ORDER OF THE State of Wisconsin Investment and Local Impact Fund Board to repeal and recreate Chapter Tax 13.07 through 13.09 pertaining to the distributions of the net proceeds occupation tax to counties and municipalities for metalliferous mining impacts.

Analysis Prepared by the Investment and Local Impact Fund Board:

The Investment and Local Impact Fund Board provides grants to counties and municipalities to alleviate metalliferous mining impacts. The Board proposes to repeal and recreate ss. Tax 13.07 through Tax 13.09, Wis. Adm. Code. These three sections of the administrative rules pertain to the Board's discretionary grant program, expenditure guidelines, and audit procedures.

Section Tax 13.07 outlines the procedures for submitting discretionary grant applications to the Board. Proposed rule revisions list what information should be included with a grant request. Applicants seeking funds for capital projects, public services, or consultant services are asked to submit a project proposal. Communities requesting grants for local impact committee operations are asked to submit a mining impact brief.

The proposed rules also state that all discretionary grant decisions will be formalized in a grant agreement. The rules list what terms the agreement will include.

The third substantive change to s. Tax 13.07 pertains to how the Board will disburse discretionary grant funds. As proposed, grants for \$2,000 or less are disbursed as a lump sum at the start of the grant project. Grant awards for more than \$2,000 are distributed on an as-needed basis once the grant recipient certifies that project costs have been incurred.

Section Tax 13.08 addresses the purposes for which discretionary grants can be spent. The major revision in this section pertains to the establishment of expenditure guidelines. The Board proposes new guidelines for four kinds of expenditures. Specifically, the revisions would mean:

1. Grant recipients could claim costs up to \$60 per hour for legal counsel when using a mining impact grant.
2. Grant recipients which receive awards for professional services must solicit a minimum of three bids for grant projects of \$2,000 or more.
3. Grant recipients could claim up to \$20 for a per diem when using mining impact funds to cover per diem expenses.

4. Grant recipients could not claim more than the travel and mileage rates allowed by the Wisconsin Department of Administration when using a mining impact grant.

The Board also proposes administrative rules to outline what will be done when it audits a grant recipient. These new rules appear in s. Tax 13.09. The proposed audits would include:

1. An examination of the grant recipient's financial statements associated with the grant to assess the fairness with which they were reported.
2. An evaluation of the expenditures to ensure they comply with the grant agreement and state regulations.
3. An assessment of the grant recipient's internal accounting system.

Finally, s. Tax 13.09 lists the criteria the Board will consider when choosing which grant recipients to audit. The Board is proposing four considerations:

1. Grant recipients where there is an indication from the expenditure report that a problem exists.
2. Grant recipients of \$25,000 or more in a given year or for a given project.
3. Grant recipients which have not been audited previously.
4. Other circumstances which indicate an audit is needed.

Throughout ss. Tax 13.07 through 13.09, the Board has made changes of an organizational nature. Also, some minor substantive and technical changes are being proposed.

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. These rules will take effect on the first day of the month following publication in the administrative register in accordance with s. 227.026 (1)(intro.), Stats.

Chapter Tax 13.07 through 13.09 is repealed and recreated to read:

Tax 13.07 DISCRETIONARY PAYMENTS. In accordance with s. 70.395(2)(g), Stats., any municipality may apply to the board for a discretionary payment from the impact fund.

(1) SCHOOL DISTRICT PAYMENTS. A school district may apply to the board for payments from the fund in an amount equal to the school district's nonshared costs. If the board finds that the school district has incurred costs attributable to enrollment resulting from the development and operation of metalliferous 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. The application process shall include the following steps:

1. Before June 1, the board may adopt an overall funding ceiling for the discretionary payment program outlined in this subsection. The level of the ceiling shall be based on the financial status of the impact fund, the board's expectation of what municipalities will need from the impact fund in the next year, and a review of the status of mineral development projects in the state. The overall funding ceiling shall be viewed throughout the application review process as a fiscal control upon the board. The board may modify the ceiling, as it deems necessary, once it has fully determined the merits of each application.

2. Before June 1, the board shall give written public notice announcing its intent to distribute discretionary grants and the total funds available for distribution. The board shall give written notice of the grant program and grant guidelines to local governments reasonably expected to be affected by metallic mineral development.

3. All discretionary grant applications submitted to the board shall be postmarked on or before July 31 in order to receive funding consideration.

4. Each application shall include a supporting resolution from the appropriate local governing body or bodies. The supporting resolution submitted to the Board shall be postmarked on or before August 31.

5. A municipality may submit more than one application. Two or more municipalities may submit a joint application.

(b) Application contents. An application may take one of two forms:

1. 'Project proposal.' Municipalities seeking funds for a particular public service or facility, including the design, construction, or maintenance

of a public facility, the hiring of consultants to provide specific legal, planning, local development, or technical assistance shall develop a project proposal for consideration by the board. The appropriate form shall be furnished by the board upon request. Information on the following shall be provided for a project proposal:

- a. A detailed description of the project and its component parts.
- b. The facts which verify the mining impact the proposal will address.
- c. A detailed budget for the proposal including the local funding contribution the municipality plans to make or any outside funding that would be used for the project.
- d. The project timetable, including the date of commencement and the date the project is expected to be completed.
- e. A description of any alternatives to the proposed project which were considered and an explanation of why the proposed project was rated more highly than the alternatives.
- f. A description of how the project will alleviate a mining impact.

2. 'Mining impact brief.' Municipalities seeking funding for the operations of a local impact committee shall submit a mining impact brief. Mining impact briefs shall include:

- a. A description of the grant activities to be performed.
- b. A detailed budget.
- c. An explanation of how the grant will alleviate a mining impact.
- d. A description of how the project will be coordinated with other related activities undertaken by other local units of government.
- e. A listing of other resources or monies which will be used for the committee.

(c) Application review process. All applications shall be reviewed by the board. The following criteria shall be used to evaluate each application:

1. The extent to which the impact is caused by metallic mining and the severity of the actual or potential impact.
2. The extent to which the applicant is prepared to deal with the mining impact and is using all possible resources to address the situation. Consideration shall be given to the following factors:
  - a. Whether the applicant will complement the project with other community assistance programs, resources, funds, or expertise.
  - b. Whether the applicant has demonstrated an ability and willingness to plan for its future.

c. Whether the applicant has demonstrated a willingness to cooperate with neighboring jurisdictions.

3. The extent to which the applicant will make effective use of a mining impact grant. Consideration shall be given to the following factors:

a. Whether the proposal is likely to accomplish its purpose and addresses the impact.

b. Whether the request is well-reasoned and cost-effective.

c. Whether the project duplicates other planned activities.

4. The extent to which funding for the impact is necessary.

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

6. The extent to which the location of each applicant, with respect to mineral development, meets three 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 three years previous to December 31 of the year in which the grant application is made, 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 three years, but less than seven years previous to December 31 of the year in which the grant application is made.

c. Distribution shall next be made to those municipalities in which metalliferous minerals are not currently being extracted and to those municipalities which are not adjacent to municipalities in which metalliferous minerals are extracted. Within this category, a higher priority shall be given to municipalities where a metalliferous mine is proposed and the mining company has filed a notice of intent under s. 144.831, Stats., a prospecting permit application under s. 144.84, Stats., or a mining permit application under s. 144.85, Stats., municipalities where metalliferous mining occurred more than three years ago, and municipalities where metallic mineral exploration is occurring.

7. During the board review of the grant proposals, applicants may appear before the board on behalf of their applications.

(d) Decision and notification process. The board shall make its funding decisions on or before October 15. The board shall notify all applicants in writing of the action taken on their respective applications.

(e) Grant agreements. Grant decisions made by the board shall be formalized in a grant agreement between the board and the local government grant recipient. The terms of the grant agreement shall include:

1. The grant project period.

2. The purposes for which the grant shall be used.
3. The grant sum awarded.
4. Provisions for the maintenance of grant funds in a segregated account.
5. Provisions for the maintenance of records of grant expenditures and supporting documentation to substantiate the costs claimed.
6. Provisions for the return of unexpended funds to the board at the end of the project period or grant year.
7. Provisions for the submittal of an expenditure report to the board at the end of the project period or grant year to document the use of the grant award.
8. Other reasonable terms the board believes necessary to ensure the prudent use of the grant funds.

(f) Grant disbursements. The board shall disburse grant awards as follows:

1. Discretionary grant awards of \$2,000 or less shall be disbursed to the grant recipient at the beginning of the grant project, after the grant agreement has been signed by both parties.

2. Grant awards for more than \$2,000 shall be distributed on an as-needed basis. A grant recipient shall certify to the board project costs that have been incurred. A grant check shall be sent to the grant recipient within three weeks for the amount of the expenditure. To certify the expense, the grant recipient shall file a certification form with the board or submit a copy of the bill to document the expenditure.

(g) Appeals process. The grant appeal process shall include the following steps:

1. Any municipality which wants to appeal a funding decision by the board shall submit a written appeal to the board within 20 days after notification. The 20-day period begins on the day after the mailing of the board's decision. The written appeal shall specify in detail:

- a. How the board has made a material error of law,
- b. How the board has made a material error of fact, or
- c. New, pertinent information which was not available to the board at the time of its decision.

2. A representative of an appealing municipality may appear before the board prior to board action on the appeal. The board shall decide whether to reconsider action on an appeal within 30 days after receipt of the written appeal. Any municipality aggrieved by a funding decision of the board may petition the circuit court for a review of the board's decision within 30 days of its original decision, or if an appeal has been sought as provided in this subdivision, within 30 days of the board's decision on that appeal. The 30-day

period begins on the day after the mailing of the board's decision. The petition for review shall be served on the board and filed in the office of the clerk of circuit court as specified in s. 227.16, Stats.

(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 sub. (2)(c), shall apply to the distribution and use of emergency reserve monies except for the specified deadline dates.

Tax 13.08 EXPENDITURES. (1) PURPOSES. Except for any first dollar payments to a city, village, town, or Native American community, all funds distributed to a municipality by the board shall be used for costs incurred to alleviate impacts caused by metalliferous mineral mining. Discretionary grants to alleviate 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 operations 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 and for processing mining-related permits or other approvals required by the municipality.

(g) The preparation of area-wide community service plans which identify social, economic, educational, and environmental impacts associated with mining and which set forth a plan for minimizing the impacts.

(h) Local impact committee operations, under s. 144.838, Stats.

(i) Other expenses associated with the construction and operation of the mining facility.

(j) Expenses attributable to a permanent or temporary closing of a mine including the cost of providing retraining and other educational programs designed to assist displaced workers in finding new employment opportunities and the cost of operating any job placement referral programs connected with the curtailment of mining operations in any area of this state.



11. Provision of educational services in a school district.

(2) SPECIAL COUNTY EXPENDITURES. Payments received by counties under s. Tax 13.06(1), may also be applied as follows:

(a) A maximum of 10% of a county's first dollar payment may be placed in a county mining investment fund for investment by the state investment board or placed in a financial institution located in the state. Funds may be withdrawn to alleviate impacts associated with the closing of the mine in the county or the curtailment of mining activity in the county. If a county deposits funds in the county mining investment fund, withdrawals are subject to the restrictions contained in s. 25.65, Stats. If a county deposits mining impact funds with a financial institution, withdrawals made within 10 years of deposit shall be subject to review and approval of the board. The county shall notify the board of withdrawals made 10 years after deposit. The county shall report annually to the board any deposits, withdrawal, and use of funds in that year.

(b) A maximum of \$25,000 of a county's first dollar payment may be distributed to any town, city, or village in the county for alleviation of mining-related costs.

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

(3) OTHER ALLOWABLE EXPENDITURES. Discretionary grants may be applied toward a variety of uses as they relate directly to the mining impact project. In general, costs for the compensation of personal services, costs of materials and supplies, travel, and other administrative costs are allowable for a grant. All grant expenditures shall comply with state and local laws, rules, and policies. Costs which shall not be allowed include:

(a) Costs incurred prior to, and after, the effective date of the grant period.

(b) Costs of social activities, ceremonies, amusements, and other entertainment.

(c) Costs incurred for legislative activities or lobbying.

(d) Costs incurred which are not directly related to the eligible funding activities listed in sub. (1).

(4) EXPENDITURE GUIDELINES. Discretionary grant funds may be used as follows:

(a) Legal fees. Grant recipients may claim costs up to \$60 per hour for legal counsel when using a mining impact grant to cover eligible legal expenses. If an attorney is hired for a rate above \$60 per hour, the grant recipient shall be responsible for paying the additional cost. Municipalities which use a mining impact grant to pay their own attorney to represent and assist them on mining matters shall use the hourly rate which is consistent with other work the attorney does for that local government.

(b) Professional services. Grant recipients which receive grant awards for \$2,000 or more for professional services, other than legal services, shall solicit a minimum of three bids for the service. This paragraph shall apply to grants for technical, planning, engineering, or other consulting services.

(c) Meeting rates. Grant recipients may claim costs up to \$20 for attending a meeting when using a mining impact grant. If the grant recipient chooses to pay a meeting rate or pay a per diem higher than \$20, the local government shall be responsible for paying the additional costs. All meeting rates or per diem rates used by the local government for mining impact committees and grant projects shall be consistent with the meeting rate or per diem rate paid for other activities of that government.

(d) Travel expenses. When using a mining impact grant to cover reasonable and necessary travel expenses, grant recipients may not claim or authorize more than the rates allowed by the State of Wisconsin, department of administration. If grant recipients choose to pay travel expenses which are higher than the state rates, the local government shall be responsible for paying the additional costs. All travel expense rates used by local governments for mining impact projects shall be consistent with the travel expense rates paid for other activities of that government.

#### (5) EXPENDITURE REPORTS.

(a) All municipalities which receive a payment or grant under this chapter shall file an expenditure report with the board by March 1 of the year following the year the funds are received. The 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 is not required to 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.

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. The audits shall consist of three parts:

(a) An examination of the municipality's financial statements to assess the fairness with which they were reported;

(b) An evaluation of the expenditures to ensure that the grant funds were used for mining impact activities and complied with the grant contract and state laws and rules; and

(c) A review of the municipality's internal accounting system to determine whether the grant was carefully managed, and where needed, provide suggestions to improve in-house procedures.

(2) The board shall attempt to insure that all grant recipients are audited periodically. In determining whether a grant recipient is to be audited in a particular year, the board shall give priority to:

(a) Grant recipients whose expenditure reports indicate that a financial accounting, compliance, or management problem exists.

(b) Grant recipients who have received grants of \$25,000 or more for a given project or for a given year.

(c) Any other circumstances which might indicate that an audit would be in the public interest.

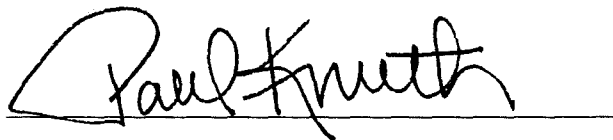
(3) If the board has evidence based on information from an audit that a municipality has not used all of a discretionary or emergency payment appropriately, the board shall hold a hearing on the matter. If the board determines from the hearing that funds were either unused or misused, the board may require recoupment of the unused or misused funds.

0602984

The rules 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 September 20, 1985

Investment and Local Impact Fund Board

A handwritten signature in black ink, appearing to read "Paul Knuth", is written over a horizontal line. The signature is stylized and cursive.

Chairperson



State of Wisconsin

MINING INVESTMENT AND LOCAL IMPACT FUND BOARD

ANTHONY S. EARL  
*Governor*

PAUL KNUTH  
*Chairman*

ELIZABETH KOHL  
*Executive Secretary*

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MAILING ADDRESS  
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MADISON, WISCONSIN 53708

December 16, 1985

Mr. Gary Poulson  
Office of Revisor of Statutes  
Suite 904  
30 West Mifflin Street  
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,

Elizabeth Kohl  
Executive Secretary

EK:lj  
Enclosures

NOTE: The rules submitted herein were officially designated as 85-116 by the Legislative Council.

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DEC 16 1985

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