

CR 93-71

CERTIFICATE  
ORDER ADOPTING RULES

STATE OF WISCONSIN)

)SS

MINING INVESTMENT  
AND LOCAL IMPACT  
FUND BOARD )

I, Lloyd Kincaid, Chairman of the Mining Investment and Local Impact Fund Board and custodian of the official records, certify that the annexed rules, relating to the waste management fund, first dollar payments, fiscal guidelines, and federal mining revenue, were duly approved and adopted by this board on March 15, 1993.

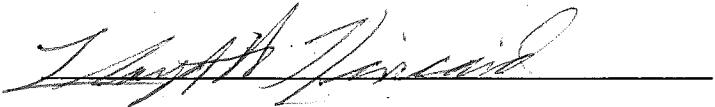
I further certify that this copy has been compared by me with the original on file in this board and that it is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand at 125 S. Webster Street in the city of Madison, this 12 day of July, 1993.

**RECEIVED**

JUL 12 1993

4:30pm  
Revisor of Statutes  
Bureau



Lloyd Kincaid, Chairman  
Mining Investment and  
Local Impact Fund Board

9-1-93

## ORDER OF THE MINING INVESTMENT AND LOCAL IMPACT FUND BOARD

The Wisconsin Mining Investment and Local Impact Fund Board hereby adopts an order to **repeal** Tax 13.05 (2); to **amend** Tax 13.08 (7)(b); and to **create** Tax 13.10 (9)(g) and (14), 13.11 (3)(e), and 13.13, relating to the waste management fund, first dollar payments, fiscal guidelines, and federal mining revenue distribution.

### ANALYSIS PREPARED BY THE MINING INVESTMENT AND LOCAL IMPACT FUND BOARD

**Rule-making authority:** ss. 70.395 (2)(hg) and (hr) and 227.11 (2), Stats.

**Statute interpreted:** s. 70.395 (2)(j), Stats.

*Regarding the waste management fund [Tax 13.05 (2)]:* According to Tax 13.05 (2), the Mining Investment and Local Impact Fund Board may be required to make payments from the impact fund for the long term care of mining waste sites under s. 144.441 (3)(g)4. and 5., Stats. Sections 144.441 (3)(g)4. and 5. have been renumbered to s. 144.441 (6)(d) and (e) by Chapter 374, Laws of 1982.

However, par. (e) has since been repealed, and par. (d), under the 1991-92 statutes, applies to the costs of long-term care of approved facilities for which the plan of operation was approved *before* August 9, 1989. No such facilities exist. Therefore, the rule may be repealed.

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**Statute interpreted:** s. 70.396 (3), Stats.

*Regarding the county use of first dollar payments:* The language in Tax 13.08 (7)(b) seemed ambiguous and unclear on who may receive a \$25,000 maximum distribution from a county's first dollar payment -- any city, town, or village in the county, or only those in which the extraction of minerals is occurring.

A city, town, or village might be impacted by mining, but *not* necessarily qualify to receive a guaranteed payment from the board to alleviate those impacts. Therefore, the board voted that the county should have the flexibility to distribute a portion of its first dollar payment to *any* city, town, or village in the county - not just to those in which mineral extraction occurs. In effect, allowing the county this flexibility follows legislative intent [s. 70.37 (2)], which says that the board must compensate the state and municipalities for costs incurred or to be incurred as a result of the loss of valuable, irreplaceable metallic minerals. These costs may be incurred by municipalities in addition to those municipalities where the mineral extraction is occurring; for example, within the municipality containing the mining tailings.

Thus, the board adopted the rule to allow distributions to any city, town, or village in the *county* in which mineral extraction is occurring. In other words, the city, town, or village would not need to have mineral extraction occurring within its borders to qualify for a distribution from the county.

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**Statute interpreted:** s. 70.395 (2)(hg), Stats.

*Regarding fiscal guidelines:* Tax 13.10 (9)(g) would ensure that service providers chosen by fund recipients are appropriately qualified to provide the services for which they are hired. Tax 13.10 (14) and Tax 13.11 (3)(e) formalize procedures often done in practice. Ensuring that recipients of funds from the board receive guidelines, rules, and laws concerning the usage of funds received, and requiring them to submit itemized invoices, may prevent misuse of funds caused by a lack of information.

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**Statute interpreted:** s. 70.395 (3), Stats.

*Regarding federal mining revenue:* Currently, there are no rules to guide the distribution of federal mining revenue received by the board under s. 70.395 (3), Stats. Rules must be promulgated to ensure proper board distribution of federal mining revenue in accordance with federal and state laws.

Sec. 70.395 (3) allows expenditures for planning, construction and maintenance of public facilities, and provision of public services. This state law may have been written specifically to address federal distribution guidelines under 30 U.S.C. 191. According to an informal opinion from Department of Revenue legal counsel, the board's definition of mining-related purposes under s. 70.395 (2)(g) coincides with acceptable uses under 30 U.S.C. 191.

Under state law s. 59.20 (13), county treasurers distribute federal revenue generated from acquired national forest land to municipalities proportional to area, in accordance with federal guidelines under 16 U.S.C. 500.

Thus, s. 70.395 (3) seems to have been written to address federal mining revenue generated only from public domain under 30 U.S.C. 191, while s. 59.20 (13) appears to address revenue generated from acquired national forest land under 16 U.S.C. 500. However, s. 70.395 (3) does not clearly indicate the separate tracks the revenues take. The proposed rules clarify that various distribution guidelines exist.

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CHAPTER TAX 13  
INVESTMENT AND LOCAL IMPACT FUND

**SECTION 1.** Tax 13.05 (2) is repealed.

**SECTION 2.** Tax 13.08 (7)(b) is amended to read:

Tax 13.08 (7)(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 ~~where the extraction of metalliferous minerals is occurring.~~

**SECTION 3.** Tax 13.10 (9)(g) and Tax 13.10 (14) are created to read:

Tax 13.10 (9)(g) Ensure that the services are provided by bidders with technical expertise and professional experience in the areas for which the expertise is sought.

Tax 13.10 (14) GUIDELINES. All recipients of funds from the board shall receive a copy of the relevant statutes, rules, and guidelines detailing proper usage of those funds.

**SECTION 4.** Tax 13.11 (3)(e) is created to read:

Tax 13.11 (3)(e) Itemized invoices to document legal, technical, and other services related to mining.

**SECTION 5.** Tax 13.13 is created to read:

Tax 13.13 FEDERAL MINING REVENUE DISTRIBUTION. The board may distribute revenue received from public domain lands under 30 U.S.C. s. 191 for mining-related purposes in accordance with s. 70.375 (1)(bm), Stats. Federal mining revenue may be co-mingled with other money in the impact fund.

NOTE: Federal revenue received from mining on acquired federal forest land under 16 U.S.C. s. 500 is distributed by the county treasurer of the county or counties in which the national forest is situated, in proportion to area each county has within the forest, in accordance with s. 59.20 (13), Stats.

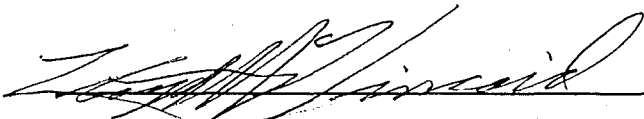
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**EFFECTIVE DATE:**

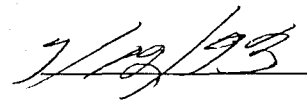
This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register, as provided in s. 227.22 (2) (intro), Stats.

**FINAL REGULATORY FLEXIBILITY ANALYSIS:**

This rule will have no effect on small businesses.



Lloyd Kincaid, Chairman  
Mining Investment and Local Impact Fund Board



Date

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