

(b) First dollar payments for counties, cities, villages, towns, and Native American communities.

(c) Payments to counties for an amount equal to 20% of the tax collected or \$250,000, whichever is less.

(d) Payments to the project reserve fund.

(e) Permit period payments to cities, villages, towns, and Native American communities.

History: Cr. Register, November, 1982, No. 323, eff. 12-1-82.

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.* 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 2 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.

2. **Mining impact brief.** A municipality which experiences or anticipates mining-related costs in several areas of public service may submit

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a mining impact brief to the board. There is no set format for a brief. Briefs should, however, include:

a. A description of existing or anticipated mining impacts and the applicant's strategy for addressing them, or

b. An indication that the applicant is prepared to apply mining impact funds towards the identification of its mining impacts and the development of an appropriate strategy for dealing with them.

(b) *Application review process.* All applications shall be evaluated by the board. The following criteria shall be applied to the evaluation of each application:

1. The extent to which the applicant has been, or may be, affected by metalliferous mining development. Consideration shall be given to such factors as:

a. The severity of economic, social and environmental impacts described, and

b. The degree to which these impacts are, in fact, attributable to mining.

2. The extent to which the applicant is prepared to deal with its mining-related impacts. Consideration shall be given to the applicant's demonstrated ability and willingness to plan for its future. The board may also use this criterion as the basis for ranking highly an applicant's request for planning monies. Addressing potential mining impacts in a local and regional planning effort is considered the first step that a municipality should take in developing an effective strategy to alleviate its mining-related costs. Planning tools which municipalities often apply in this regard include:

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.

c. Distribution shall next be made to those municipalities which are not adjacent to municipalities in which metalliferous minerals are extracted and in which metalliferous minerals are not extracted.

(c) *Decision and notification process.* The board shall make its funding decisions by October 1. The board shall notify all applicants, in writing, of the action taken on their respective applications.

(d) *Payment schedules.* Each December, the board shall establish a payment schedule for each discretionary award. During the year following, the board shall certify to the department of administration the specific payment or payments to be made according to each schedule.

(e) *Appeals process.* 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 how the board has made a material error of law, how the board has made a material error of fact, or new, pertinent information which was not available to the board at the time of its decision. A representative of an appealing municipality may appear before the board prior to board action on the appeal. The board shall take action on an appeal within 30 days after receipt of the written appeal. Any municipality that feels 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) (b), shall apply to the distribution and use of emergency reserve monies, except for the specified deadline dates.

History: Cr. Register, November, 1982, No. 323, eff. 12-1-82.

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.

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(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.

(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.

(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.

(k) 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 sub. (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 sub. (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 sub. (1).

History: Cr. Register, November, 1982, No. 323, eff. 12-1-82.

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 from the hearing that funds were either unused or misused, the board may require recoupment of the unused or misused funds.

History: Cr. Register, November, 1982, No. 323, eff. 12-1-82.

Tax 13.10 Investments. (1) Each July the board shall also determine the amount of funds to be invested with the state investment board. The board may designate a portion of these funds as emergency reserve monies to be used by the board in the manner described in s. Tax 13.07 (3). Factors entering into these annual investment decisions shall include the following:

- (a) Record of tax revenues deposited into the fund.
- (b) Record of board payments to municipalities.
- (c) Record of board investments with the state investment board.
- (d) Mining-related costs anticipated by municipalities.

(2) By July 31 the board shall certify to the department of administration the amount of its investment. The department of administration shall thereupon make the certified investment no later than August 31.

History: Cr. Register, November, 1982, No. 323, eff. 12-1-82.

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Tax 13.11 Exceptions. Section Tax 13.06 (1) through (5) applies to distributions from mines that begin operations after November 27, 1981. With respect to mines which first begin operations prior to November 28, 1981, the board shall administer the distribution from such mines pursuant to s. 70.395, 1979 Stats. Certain counties, cities, villages, and towns shall receive annual payments from the impact fund, as follows:

(1) Each county in which metalliferous minerals are extracted shall receive 20% of the tax collected under ss. 70.38 to 70.39, Stats., from persons extracting metalliferous minerals in that county. The maximum payment which may be received by a county in any one year is \$750,000.

(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 ss. 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 sub. (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 sub. (2).

(b) Each county's proportion of the amount determined under sub. (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 sub. (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).

History: Cr. Register, November, 1982, No. 323, eff. 12-1-82.

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