

Chapter Tax 13

INVESTMENT AND LOCAL IMPACT FUND

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Note: Chapter Tax 13 as it existed on November 30, 1982, was repealed and a new chapter Tax 13 was created effective December 1, 1982.

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.

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

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.

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

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.

(3) "Construction" means the activities described in the approved mining plan which can only occur at the mining site with the issuance of a mine permit and written authorization to commence mining under ss. 144.85 and 144.86 (3), Stats.

(4) "Construction period payment" means:

(a) 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 a, Stats., during the construction period.

(b) An amount equal to \$300,000 for each county eligible to receive a payment under s. 70.395 (2) (d) 5 b., Stats., during the construction period, less the amount of property taxes paid to the county during the current project year on improvements made by the person engaged in metalliferous mining and any payments received by the county under s. 70.395 (2) (d)1 and 1m, Stats.

(5) "First dollar payment" means an amount equal to \$100,000 for each county, city, village, town, or Native American community eligible

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to receive a payment under s. 70.395 (2) (d) 1, 2 or 2m, Stats. If the tax collected under ss. 70.38 to 70.39, Stats., in any year is less than the first dollar payment as defined in this subsection, the first dollar payment for that year means the total amount of taxes collected under ss. 70.38 to 79.39, Stats.

(6) "Impact fund" means investment and local impact fund.

(7) "Indexed" means an adjustment made to payments under s. Tax 13.06 (1), (2), and (3), to reflect the percentage change between the gross national product deflator for June of the current year and the gross national product deflator for June of the previous year, as determined by the U.S. department of commerce as of December 30 of the year for which the taxes under ss. 70.38 to 70.39, Stats., are due, except that no annual increase may be more than 10%. The revised amounts shall be rounded to the nearest whole number divisible by 100.

(8) "Mine" means an excavation in or at the earth's surface made to extract metalliferous minerals for which a permit has been issued under s. 144.85, Stats.

(9) "Mining" or "mined" has the meaning under s. 70.375 (1) (b), Stats.

(10) "Mining permit application" means the mine permit application form filed with the department of natural resources pursuant to s. NR 132.06 Wis. Adm. Code.

Note: The mine permit application is Form 2700-4, Rev. 4-82.

(10m) "Mining related purposes" has the meaning designated in s. 70.375 (1) (bm), Stats.

(11) "Mining site" means the location:

(a) Of a metalliferous ore deposit for which a mine permit application has been filed pursuant to s. 144.85, Stats.

(b) Designated by s. 70.375 (1) (av), Stats., limited to the proposed location of the defined areas, structures, and equipment as shown in a mining plan:

1. Filed as part of a mine permit application under s. 144.85, Stats., or

2. Filed with the board as part of the written notice by a person intending to begin construction under s. 13.05.

(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 12-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.

History: Cr. Register, November, 1982, No. 323, eff. 12-1-82; emerg. cr. (10m), eff. 1-1-86. am. (4), cr. (10m), r. and recr. (11), Register, September, 1986, No. 369, eff. 10-1-86.

Tax 13.05 Transfer of taxes, funds, and fees. (1) NET PROCEEDS TAX. Fifteen days after collection of the tax, the department of administration, upon certification of the department of revenue, shall transfer the amount collected as follows:

(a) From mines in operation on or before November 27, 1981:

1. Forty percent to the general fund.
2. Sixty percent to the impact fund.

(b) From mines which first begin operations after November 27, 1981:

1. The first dollar payment or 60% of the taxes collected, whichever is greater, to the impact fund.

2. After the distribution in subd. 1, the remainder of the taxes collected to the badger fund under s. 25.28, Stats.

3. If the balance in the impact fund is more than \$20 million on January 1 of any year, the board shall transfer the excess over \$20 million to a segregated account to be administrated under s. 25.28, Stats. The interest which accrues on the amount transferred to the segregated account shall be used pursuant to s. 25.28, Stats. For the purpose of determining the amount to be transferred, any monies deposited in the project reserve fund under s. Tax 13.06 (4) shall not be included in the impact fund balance.

4. The board may transfer funds from the segregated account established under subd. 3, up to the amount previously transferred in all prior years, under 2 conditions:

a. When the impact fund does not have sufficient funds to make any of the payments authorized under s. 70.395, Stats., for any year, or

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

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(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% 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 mining plan showing the location of the mining site.

(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 counties, cities, villages, towns, and Native American communities to receive construction period payments.

(c) In determining the construction fee, construction is considered to begin in all cities, villages, and towns that are part of the mining site when it begins in any part of the mining site. The construction period payments for cities, villages, towns, and Native American communities 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 and shall not be reduced below \$100,000.

(d) Within 7 days after the beginning of construction, a person shall pay the construction fee to the department of revenue for deposit in the impact fund.

(e) For each year construction continues up to 3 years after the production of concentrates begins, the construction fee shall be paid to the department of revenue within 30 days after notification of the assessment.

History: Cr. Register, November, 1982, No. 323, eff. 12-1-82; am. (3) (a), (b) and (c), Register, September, 1986, No. 369, eff. 10-1-86.

Tax 13.06 Direct payments. (1) **FIRST DOLLAR PAYMENTS.** Certain counties, cities, villages, towns, and Native American communities shall receive a first dollar payment under s. 70.395 (2) (d), Stats. The board shall give written public notice in July listing the municipalities to receive a first dollar payment or a percentage of the tax collected, or both, and the amount of each payment. Each December, the board shall certify to the Register, July, 1987, No. 379

department of administration the specific payments to be made on the first Monday in January of the next year, as follows:

(a) *Counties*. 1. Each county in which the metalliferous minerals are extracted shall receive a first dollar payment.

2. Each county in which the metalliferous minerals are extracted shall also receive 20% of the tax collected from persons in that county or \$250,000, whichever is less.

(b) *Cities, villages, and towns*. Each city, village, and town in which metalliferous minerals are extracted, or which contain at least 15% 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 mines that year multiplied by the amount of the payment under par. (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 par. (a) 2 is indexed, the amount shall not be reduced below \$250,000.

(2) **CONSTRUCTION PERIOD PAYMENTS**. Certain counties, 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., at which construction begins prior to January 1, 1989, and for which a construction fee has been paid, shall receive annual payments during the time periods 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.a. and b., Stats. The funds paid under this subsection shall be used only for mining-related purposes. The following municipalities shall receive construction period payments:

(a) *Cities, villages, towns, and Native American communities*. Each city, village, and town that contains a mining site and each Native American community located within one or more cities, villages, or towns that contains a mining site.

1. The first payment shall be made within 30 days after construction begins. Subsequent annual payments shall be made on the anniversary date of the first payment.

2. The payment amounts in this paragraph shall be indexed beginning in calendar year 1983 and corresponding fiscal years. The revised amount

shall be rounded to the nearest whole number divisible by \$100 and shall not be reduced below \$100,000.

3. Payments will be made for each year that construction continues at that site for up to three years after the production of concentrates begins.

(b) *Counties.* Each county that contains a mining site. The first payment shall be made within 30 days after the date which is one year after the commencement of construction.

1. Counties may receive payments under s. 70.395 (2) (d) 5 b only for mining-related purposes. The county shall submit to the board at least 60 days before the anniversary of the commencement of construction a request for payment, with an explanation of the mining-related purpose of each element of the county's request. The county may seek board approval for mining-related expenditures at any time during the year. The board may hold a hearing on the county's request. The board shall certify to the department of administration for payment to the county either the maximum payment allowable under s. 70.395 (2) (d) 5 b, or the amount of the county's request which the board determines is for mining-related purposes, whichever is less. The county shall be eligible for a payment for each year that construction continues at that site until the production of concentrates begins.

2.a. It is a mining-related purpose for the county to use a portion of the construction period payment to fund projects or activities of a city, village, town, or Native American community located within the county, if such a project or activity is for a mining-related purpose.

b. A city, village, town, or Native American community may submit a request to the county to receive a portion of the county's construction period payment. The request shall include an explanation of the mining-related purpose of each element of the request. One or more cities, villages, towns, or Native American communities may submit a joint request. The county shall evaluate its own request together with the requests of any city, village, town, or Native American community and may include such a request as part of the county's request to the board.

(3) **PERMIT PERIOD PAYMENTS.** Certain cities, villages, towns, and Native American communities that contain a mining site for which a mine permit application is submitted under s. 144.85, Stats., shall receive annual payments from the impact fund during the time persons are engaged in the mine permitting process in relation to that site. The board shall determine the cities, villages, towns, and Native American communities to receive permit period payments based on the location of the metallic mineral deposit, the concentrator, and the tailings disposal pond as proposed in the mine permit application.

(a) These payments shall be made within 30 days after the mine permit application is filed. The payment shall be paid annually on the anniversary date of the first permit period payment for each year the permitting process continues until a final administrative or judicial decision is made on the mine permit application, the person formally withdraws the mine permit application, or for 4 years, whichever is the shorter period. No more than 4 annual permit period payments shall be made to cities, villages, towns, and Native American communities in relation to any one metallic mineral deposit.

(b) The permit period payments shall be indexed beginning in calendar year 1983 and corresponding fiscal years. The revised amount shall be rounded to the nearest whole number divisible by 100 and shall not be reduced below \$100,000.

(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% 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 to that municipality for the 3 previous years.

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

(c) To indemnify municipalities for reclamation expenses not covered under s. 144.91 (2), Stats.

(5) **PAYMENT PRIORITIES.** If the appropriations under s. 20.566 (7) (e) and (v), Stats., in any one year are not sufficient to pay the full amount under subs. (1) through (4), full payments shall be made in the order listed in this subsection. If funds are not sufficient to pay the full amounts payable at a particular priority level, payments shall be prorated among the entities entitled to payments at that level. Payments shall be made in the following order pursuant to s. 70.395 (2) (e), Stats.:

(a) Construction period payments to counties, cities, villages, towns, and Native American communities which contain a mining site and for which a mining company has paid a construction fee for that site.

(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; emerg. cr. (2) (c), eff. 1-1-86; r. and rec. (2) (intro.), (a) and (b), am. (5) (a), Register, September, 1986, No. 369, eff. 10-1-86.

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 non-shared 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 resolutions submitted to the board shall be postmarked on or before August 31.

a. Each local or joint impact committee application shall be accompanied by a supporting resolution from the committee.

b. Each joint impact committee application shall be accompanied by a supporting resolution from each local committee within the area served by the joint committee and from each municipality which appoints the joint committee.

c. Each local impact committee application shall be accompanied by a supporting resolution from its appointing authority.

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

6. The board may provide partial funding to a municipality for a mining-related project. The board may also require municipalities to provide matching funds toward project costs as a condition for receiving a discretionary grant.

(b) *Application contents.* An application may take one of 2 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 components 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 or a joint impact committee shall submit a mining impact brief. The appropriate form shall be furnished by the board upon request. Mining impact briefs shall include:

a. A description of the proposed committee activities to be performed.

b. A detailed budget including a description of the amount and sources of other funds and resources that will be applied toward committee activities during the proposed project.

c. An explanation of how the proposed committee activities will alleviate a mining related impact or impacts.

d. A description of how the project will be coordinated with other related activities undertaken by other local units of government and other local and joint impact committees.

e. A comprehensive description of the committee's long-term plans and goals, including a description of the committee activities for which it anticipates that funding will be sought from the board and from other sources in the year subsequent to the proposed project and during the long-term planning period.

f. A description of how the proposed activities to be funded relate to the long-term plans of 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 had 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 board shall consider the following additional criteria in evaluating a funding application submitted by a local impact committee:

a. The extent to which the funding proposal conforms with the statutory purposes of a local impact committee in s. 144.838 (1), Stats., and meets the requirements of s. 144.838 (4), Stats.

b. The adequacy of the local impact committee's long-term plan and the appropriateness of the funding proposal in relation to the long-term plan.

c. The degree of support provided to the local impact committee by its appointing authority, including staff support, direct financial support,

and approval by the appointing authority of the local impact committee's activities, as evidenced by supporting resolution.

d. The efforts of the local impact committee to obtain additional funding from other sources.

e. The past success of the local impact committee in accomplishing its statutory purposes.

f. The performance of the local impact committee in financial audits and the steps taken by the local impact committee to correct inadequacies noted in audits.

7. The board shall consider the following additional criteria in evaluating a funding application submitted by a joint impact committee:

a. The extent to which the funding proposal conforms with the purposes of the joint committee specified in this chapter.

b. The adequacy of the joint impact committee's long-term plan and the appropriateness of the funding proposal in relation to the long-term plan.

c. The degree of local support for activities of the joint committee, including staff services donated by municipalities within the area served by the joint committee, direct financial support received or anticipated to be received from local impact committees and municipalities within the area served by the joint committee and approval of the activities of the joint committee as evidenced by supporting resolutions from local committees, municipalities, and tribal governing bodies within the area served by the joint committee.

d. The efforts of the joint impact committee to obtain additional funding from other sources.

e. Past successes of the joint committee in implementing the purposes specified for the joint committee in this chapter.

f. Performance of the joint committee on financial audits and steps taken by the joint committee to correct inadequacies noted in any financial audit.

g. The adequacy of communications between the joint impact committee and the local impact committees, municipalities, and tribal governing bodies within the area served by the joint impact committee.

8. When providing partial funding or requiring local matching funds for a grant project, the board shall consider:

a. The extent to which the project is mining related.

b. The extent to which the project is necessary for alleviating a mining-related impact.

c. The extent to which outside funding is necessary.

d. The extent to which a municipality receives other revenues associated with a proposed or operating mine.

e. The amount of funds available in the investment and local impact fund and the short term and long term needs of mining communities throughout the state.

9. The extent to which the location of each applicant, with respect to mineral development, meets 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 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 3 years, but less than 7 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 3 years ago, and municipalities where metallic mineral exploration is occurring.

10. 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 3 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) Any 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 impact 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.

(b) The board shall not consider requests for emergency payments from local or joint impact committees for administrative or operational expenses.

History: Cr. Register, November, 1982, No. 323, eff. 12-1-82; r. and recr. Register, February, 1986, No. 362, eff. 3-1-86; am. (2) (a) 4., (2) (b), 2. intro. and a. to d. and (3), renum. (2) (c) 6. and 7. to be (2) (c) 9. and 10., cr. (2) (a) 4.a. to c., (2) (a) 6., (2) (b) 2.f. and (2) (c) 6. to 8., r. and recr. (2) (b) 2.c., Register, September, 1986, No. 369, eff. 10-1-86.

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Tax 13.075 Local and joint impact committees. (1) **STATUTORY AUTHORITY.** Under s. 144.838, Stats., a local impact committee or a joint impact committee may apply to the board for a discretionary payment from the impact fund.

(2) **PURPOSES OF LOCAL AND JOINT IMPACT COMMITTEES.** (a) *Local impact committees.* Local impact committees may be established for the purposes specified in s. 144.838 (1), Stats.

Note: 144.838 Local impact committee. (1) *A county, town, village, city or tribal government likely to be substantially affected by potential or proposed mining may designate an existing committee, or establish a committee, for purposes of:*

- (a) *Facilitating communications between operators and itself.*
- (b) *Analyzing implications of mining.*
- (c) *Reviewing and commenting on reclamation plans.*
- (d) *Developing solutions to mining-induced growth problems.*
- (e) *Recommending priorities for local action.*

(f) *Formulating recommendations to the investment and local impact fund board regarding distribution of funds under s. 70.385 (2) (g), Stats.*

(b) *Joint impact committees.* A joint impact committee may be established for the purposes of:

1. Providing communications and coordination between local committees.
2. Providing services to local committees.
3. Eliminating duplication of effort by local committees.
4. Providing the services listed in s. 144.838 (1), Stats., in any municipality which appoints a member to the joint impact committee but does not have a local impact committee.
5. Providing any of the services listed in s. 144.838 (1), Stats., upon request of a local impact committee.

(3) **MEMBERSHIP OF LOCAL AND JOINT COMMITTEES.** (a) *Committee membership.* Under s. 144.838 (2), Stats., a local or joint impact committee may include as members representatives of affected units of government, business and industry, manpower, health, protective or service agencies, school districts or environmental and other groups or other interested parties.

(b) *Joint impact committees.* Each local committee in the area served by the joint impact committee shall appoint one local committee member to serve as a member of the joint impact committee. Each municipality or Native American community which appoints the joint impact committee, but not a local impact committee, shall appoint one person to serve as a member of the joint impact committee.

History: Cr. Register, September, 1986, No. 369, eff. 10-1-86.

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 mining-re-Register, July, 1987, No. 379

lated purposes. 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:

(2) PERMIT PERIOD PAYMENTS. Once a mining permit application is filed pursuant to s. 144.85, Stats., and prior to mine construction, funds disbursed in accordance with s. 70.395 (2) (d) 5 a, Stats., may be spent for purposes directly in response to the filing of the mining permit application, limited to:

(a) Facilitating communications with the mining company and state agencies.

(b) Analyzing the implications of the proposed mine.

(c) Reviewing and commenting on the mining reclamation plans, permit applications or the environmental impact statement.

(d) Developing written solutions to potential mining-induced growth problems.

- (e) Developing and recommending priorities for local action.
 - (f) Legal counsel and technical consultants in accordance with ss. 70.395 (2) (g)6 and 70.395 (2) (hw), Stats.
 - (g) Public participation activities directly related to the review of the proposed mining project by state agencies.
 - (h) Planning consultants.
 - (i) Preparation of areawide community service plans which identify social, economic, educational, and environmental impacts associated with mining and set forth a plan for minimizing the impacts.
 - (k) Necessary supplies and materials pertaining to the activities listed in this subsection.
- (3) CONSTRUCTION PERIOD PAYMENTS. Once mine construction begins, funds disbursed in accordance with s. 70.395 (2) (d)5, Stats., may be spent for purposes directly in response to mine construction, limited to:
- (a) Activities listed in sub. (2).
 - (b) Protective services, such as police and fire services.
 - (c) Repair and construction of highways, as defined in s. 990.01 (12), Stats.
 - (d) Studies for local development.
 - (e) Monitoring the effects of the mine.
 - (f) Extraordinary services and facilities needed.
 - (g) Provision of educational services in a school district.
 - (h) Public service expansion and maintenance.
 - (i) Capital equipment and improvements.
 - (j) Other expenses incurred as a direct result of mine construction.
- (4) OPERATION PERIOD PAYMENTS. Once mining begins, discretionary payments made in accordance with s. 70.395 (2) (g), Stats., and payments paid to counties in accordance with s. 70.395 (2) (d)1 and 1m, Stats., may be spent for mining related purposes, limited to:
- (a) Activities listed in subs. (1), (2) and (3).
 - (b) Other expenses resulting directly from the mine.
- (5) CURTAILMENT AND CESSATION PERIOD PAYMENTS. In preparation for either the permanent or temporary cessation of mining, discretionary payments made in accordance with s. 70.395 (2) (g), Stats., and first dollar payments paid to counties in accordance with s. 70.395 (2) (d)1 and 1m, Stats., may be spent for mining related purposes limited to:
- (a) Economic development activities.
 - (b) Planning consultants and projects.
 - (c) Monitoring the effects of the mine.

(d) Legal counsel and technical consultants pursuant to ss. 70.395 (2) (g)6 and 70.395 (2) (hw), Stats.

(e) Analysis and implementation of plans to address economical, social, educational, and environmental impacts of the mine closing.

(f) Services needed in direct response to mine closing.

(g) Expenses attributable directly to the temporary or permanent closing of a mine.

(6) OTHER MINING-RELATED COSTS. Municipalities may seek approval from the board for other mining-related projects not outlined in this section. Applications seeking expenditure approval shall contain:

(a) Documentation of a metallic mining impact.

(b) Documentation of need.

(c) Documentation that the proposal is well reasoned, cost effective, and will accomplish its purpose.

(7) SPECIAL COUNTY EXPENDITURES. First dollar 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 where the extraction of metalliferous minerals is occurring.

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

(8) OTHER ALLOWABLE EXPENDITURES. Discretionary grants and other funds disbursed by the board may be applied toward a variety of uses as they relate directly to a mining impact project. In general, costs for the compensation of personal services, costs of materials and supplies, travel, and other administrative costs are allowable. All 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 a discretionary grant period.

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

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(c) Costs incurred for lobbying members of the legislature or other legislative activities.

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

History: Cr. Register, November, 1982, No. 323, eff. 12-1-82; r. and recr. Register, February, 1986, No. 362, eff. 3-1-86; am. (1) (intro.), renum. (2) and (3) to be (7) and (8) and am., r. (4) and (5), cr. (2) to (6), Register, September, 1986, No. 369, eff. 10-1-86.

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 3 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.

History: Cr. Register, November, 1982, No. 323, eff. 12-1-82; r. and recr. Register, February, 1986, No. 362, eff. 3-1-86; r. (3), Register, September, 1986, No. 369, eff. 10-1-86.

Tax 13.10 Fiscal guidelines. All funds disbursed under this chapter shall be governed by the following provisions:

(1) **SEGREGATED ACCOUNTS.** All funds disbursed by the board shall be placed by the recipient government in a separate account and the use of funds clearly and directly identified by the accounting procedures listed in s. Tax 13.11

(2) **INVESTMENTS.** Funds may be invested by recipient governments where the investment of revenue is permitted under state and local law. Interest earned on investments shall be credited to the recipient's segregated mining impact account and is subject to the same limitations which govern the accounting and expenditure of funds in this chapter. Funds may be invested separately or, for investment purposes, pooled with other cash of the jurisdiction. Where a governmental unit operates a pooled-cash investment program, it shall have an equitable procedure

for allocating the interest earned on the total portfolio among all funds from which the cash was pooled.

(3) **LOANS.** The recipient municipality may not loan funds to other activities, programs, or projects.

(4) **INDIRECT OR ADMINISTRATIVE COSTS.** All administrative costs shall be accounted for in sufficient detail to document the expenditures. No flat percentage rates or indirect cost rates shall be used.

(5) **TRAVEL EXPENSES.** Funds may be used to cover reasonable and necessary travel expenses pertaining to mining-related activities. Fund recipients may not claim or authorize rates which exceed the rates allowed by the state of Wisconsin, department of administration. All travel expense rates used by a fund recipient shall be consistent with travel expense rates paid for other activities of the recipient government. If the recipient chooses to pay travel expenses which are higher than state rates, that municipality shall pay the additional cost. Only reasonable and necessary travel expenses shall be claimed.

Note: Travel rates allowed by the Wisconsin department of administration under s. 203.12 (1), Stats., are available upon request from the board.

(6) **MEETING RATES.** Fund recipients may claim or authorize costs up to \$20 per person for attending mining-related meetings. All meeting rates claimed by the fund recipient shall be consistent with the meeting rate paid for other activities of that municipality. If the recipient chooses to pay a meeting rate higher than \$20 per person, that municipality shall pay the additional cost.

(7) **LEGAL FEES.** Fund recipients may claim up to \$60 per hour for legal counsel for mining-related purposes, pursuant to s. 70.395 (2) (hw), Stats. Recipients which use funds to pay their own attorney shall use the hourly rate which is consistent with other work the attorney does for that municipality. Recipients which choose to pay an attorney a rate above \$60 per hour shall pay the additional cost.

(8) **SUPPLIES AND MATERIALS.** Supplies and materials purchased with mining impact funds shall be purchased at costs which are consistent with costs paid by that municipality for its own supplies and services.

(9) **PROCUREMENT OF SERVICES.** Fund recipients shall solicit a minimum of 3 proposals when purchasing services for \$2,000 or more. This subsection shall apply to technical, planning, engineering, and other consulting and professional services. Public works projects paid with mining impact funds are subject to provisions outlined in ss. 59.08, 60.47, 61.55, 62.15, and 120.55, Stats. Procurement procedures shall:

- (a) Ensure equal treatment to all prospective bidders.
- (b) Maximize open and free competition for services needed.
- (c) Ensure the buyer-seller relationship is free from conflicts of interest or the appearance of conflicts of interest.
- (d) Ensure the reasons a particular consultant or contractor was chosen are clearly documented.
- (e) Ensure sufficient records are available to document the significant history of the procurement.

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(f) Ensure services are obtained efficiently and economically.

(10) **CONTRACTS.** All services for \$2,000 or more, procured with mining impact funds, shall be clearly described in a written contract. The contract shall delineate the terms, conditions, and specification of the services.

(11) **HIRING.** Hiring of personnel for mining-related purposes shall be done in an open and fair manner.

(12) **OTHER EXPENDITURES.** Fund recipients shall also ensure all expenditures are:

- (a) Necessary and reasonable.
- (b) Solely related to the mining impact activity or project.
- (c) Consistent with local policies and practices.

(13) **EXPENDITURES NOT ALLOWS.** Fund recipients may not claim expenditures for:

- (a) Retainer fees for attorneys and other consultants.
- (b) Overdrawn account charges of a financial institution.
- (c) Loan interest.
- (d) Independent financial or compliance audits.
- (e) Social activities, ceremonies, amusements, and entertainments.
- (f) Lobbying members of the legislature or other legislative activity.
- (g) Building space, lights, heat and janitorial services, except when these costs are incurred and needed as a result of meetings held exclusively for mining related purposes.
- (h) Salaries for elected governing body officials for legislative, administrative, and executive purposes.

History: Cr. Register, November, 1982, No. 323, eff. 12-1-82; r. and recr. Register, September, 1986, No. 369, eff. 10-1-86.

Tax 13.11 Accounting procedures. All recipients of funds under this chapter shall maintain accounting procedures which adequately provide for the following:

(1) Accurate, current, and complete financial statements on the use of funds disbursed to them by the board.

(2) Accurate, current, and complete financial statements on funds contributed from other sources toward mining impact projects or activities.

(3) Records which identify adequately the source and application of all funds disbursed to them by the board, including:

(a) Records of transactions pertaining to the grant funds which are inclusive, timely, verifiable, and supported by source documentation.

(b) Records on in-kind services and cost-sharing when required by the board for certain discretionary payments under s. Tax 13.07.

(c) Records which adequately establish the compliance of funds for mining-related purposes.

(d) Records which are sufficiently detailed.

(4) Effective internal control over all funds, ensuring that:

(a) The use of funds is for purposes authorized by the board and consistent with applicable laws, regulations and policies.

(b) The use of funds is safeguarded against waste, loss and misuse.

(c) The use of funds is supported with reliable data.

(5) (a) All municipalities which receive a payment or grant under this chapter shall file an expenditure report 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 (7) (a).

(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 payment 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.

History: Cr. Register, November, 1982, No. 323, eff. 12-1-82; r. and recr. Register, September, 1986, No. 369, eff. 10-1-86.

Tax 13.12 Recoupment and withholding of payments. (1) The board may, at any time, recoup direct, discretionary and emergency payments to be made, for noncompliance with ss. 70.395 and 70.396, Stats., or any rule pursuant thereto.

(2) Whenever the board has reason to believe that noncompliance has occurred, it shall hold a hearing on the matter upon written notice to the municipality. If after the hearing the board determines that noncompliance has occurred, it shall recoup such payments to be made and withhold such payments to be made to the municipality as may be appropriate.

History: Cr. Register, September, 1986, No. 369, eff. 10-1-86.