

ORIGINAL HOUSE
BILL NO. HB0152

ENROLLED ACT NO. 71, HOUSE OF REPRESENTATIVES

SIXTY-THIRD LEGISLATURE OF THE STATE OF WYOMING
2015 GENERAL SESSION

AN ACT relating to impact assistance payments; revising duties of the department of environmental quality and industrial siting division as specified; revising how impact assistance payment amounts are calculated; providing rulemaking authority; repealing conflicting provisions; providing applicability; providing an appropriation; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 35-12-105(c), 39-15-111(c) and (d)(i) and 39-16-111(d) and (e)(i) are amended to read:

35-12-105. Appointment and duties of administrator; staff; rules and regulations.

(c) The director, administrator and the staff of the division are authorized to the extent possible, at the request of local governments, to provide technical assistance to local governments in the preparation of anticipated impacts related to a proposed project consistent with W.S. 39-15-111(c) and (d) and 39-16-111(d) and (e) and negotiation of agreements with applicants as provided for in W.S. 35-12-107. ~~and 35-12-113(a)(vi).~~

39-15-111. Distribution.

(c) If any person commences after the effective date of this act to construct an industrial facility, as that term is defined in W.S. 35-12-102, under a permit issued pursuant to W.S. 35-12-106, or if the federal or state government commences to construct any project within this state with an estimated construction cost as specified in the definition of industrial facility in W.S. 35-12-102 the ~~state treasurer~~ department of revenue shall thereafter pay to the county treasurer and the county treasurer will

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distribute to the county, cities and towns of that county in which the industrial facility or project is located, impact assistance payments from the monies available under paragraph (b)(i) of this section. Each payment to the county treasurer shall be equal to ~~the excess of each monthly payment made under paragraph (b)(iii) of this section during the period of construction over the base period amount~~ an amount determined by the industrial siting council under this subsection and shall continue during the period of construction except that in the case of an industrial facility or a federal or state government project which is expected to continue in phases for an indefinite period of time, the ~~state treasurer~~ department of revenue shall discontinue payments under this section ~~and establish a new base period~~ when construction of any phase has ceased or been substantially completed for twelve (12) consecutive months. The person constructing the industrial facility and the counties affected by the construction of the industrial facility shall provide evidence at the public hearing held pursuant to W.S. 35-12-110(f)(i) of the mitigated and unmitigated impacts that the construction will have on the counties, cities and towns determined by the industrial siting council to be affected by the construction of the industrial facility. The industrial siting council shall review the evidence of the impacts and determine, applying a preponderance of evidence standard, the dollar amount of the unmitigated impacts. The council shall state, in the order issued under W.S. 35-12-113(a), the total dollar amount of the impact assistance payment and the reasons for determining that amount. The impact assistance payment shall be distributed by the department of revenue in an amount and on a schedule determined by the council, based on evidence presented at the hearing. Under no circumstances shall the impact assistance payment exceed two and seventy-six hundredths percent (2.76%) of the total estimated material costs of the facility, as those costs are determined by the council.

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The impact assistance payments shall be distributed to the county treasurer and the county treasurer will distribute to the county and to the cities and towns therein based on a ratio established by the industrial siting council during a public hearing held in accordance with W.S. ~~35-12-110~~ 35-12-110(f)(i). The industrial siting council shall review the distribution ratio for construction projects on a regular basis and make appropriate adjustments. A governing body which is primarily affected by the facility, or any person issued a permit pursuant to W.S. 35-12-106, may petition the industrial siting council for review and adjustment of the distribution ratio or the amount of the impact assistance payment upon a showing of good cause. The impact assistance payment shall be in addition to all other distributions under this section, but no impact assistance payment shall be made for any period in which the county or counties are not imposing at least a one percent (1%) tax authorized by W.S. 39-15-204(a)(i) and 39-16-204(a)(i) or at least a total of a two percent (2%) sales tax authorized under W.S. 39-15-204(a)(i), (iii) and (vi) and at least a total of a two percent (2%) use tax authorized under W.S. 39-16-204(a)(i), (ii) and (v). For purposes of this subsection, the industrial facility or federal or state government project will be deemed to be located in the county in which a majority of the construction costs will be expended, provided that upon a request from the county commissioners of any adjoining county to the industrial siting council, the council may determine that the social and economic impacts from construction of the industrial facility or federal or state government project upon the adjoining county are significant and establish the ratio of impacts between the counties and certify that ratio to the ~~state treasurer~~ department of revenue who will thereafter distribute the impact assistance payment to the counties pursuant to that ratio. The industrial siting council shall adopt rules as necessary to implement this subsection.

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(d) As used in subsection (c) of this section:

(i) "Period of construction" begins at the commencement of construction and ends when the physical components of the industrial facility or federal or state government project are ninety percent (90%) complete, provided, if payments are already being made under this act, commencement of construction of another industrial facility or federal or state government project will not be considered for purposes of establishing a new ~~base period~~ impact assistance payment amount or determining when payments will commence under this act, but will only be considered for determining when the period of construction ends;

39-16-111. Distribution.

(d) If any person commences after the effective date of this act to construct an industrial facility, as that term is defined in W.S. 35-12-102, under a permit issued pursuant to W.S. 35-12-106, or if the federal or state government commences to construct any project within this state with an estimated construction cost as specified in the definition of industrial facility in W.S. 35-12-102 the ~~state treasurer~~ department of revenue shall thereafter pay to the county treasurer and the county treasurer will distribute to the county, cities and towns of that county in which the industrial facility or project is located, impact assistance payments from the monies available under paragraph (b)(i) of this section. Each payment to the county treasurer shall be equal to ~~the excess of each monthly payment made under paragraph (b)(iii) of this section during the period of construction over the base period amount~~ an amount determined by the industrial siting council under this subsection and shall continue during the period of construction except that in the case of an industrial facility or a federal or state government

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project which is expected to continue in phases for an indefinite period of time, the ~~state treasurer~~ department of revenue shall discontinue payments under this section ~~and establish a new base period~~ when construction of any phase has ceased or been substantially completed for twelve (12) consecutive months. The person constructing the industrial facility and the counties affected by the construction of the industrial facility shall provide evidence at the public hearing held pursuant to W.S. 35-12-110(f)(i) of the mitigated and unmitigated impacts that the construction will have on the counties, cities and towns determined by the industrial siting council to be affected by the construction of the industrial facility. The industrial siting council shall review the evidence of the impacts and determine, applying a preponderance of evidence standard, the dollar amount of the unmitigated impacts. The council shall state, in the order issued under W.S. 35-12-113(a), the total dollar amount of the impact assistance payment and the reasons for determining that amount. The impact assistance payment shall be distributed by the department of revenue in an amount and on a schedule determined by the council, based on evidence presented at the hearing. Under no circumstances shall the impact assistance payment exceed two and seventy-six hundredths percent (2.76%) of the total estimated material costs of the facility, as those costs are determined by the council. The impact assistance payments shall be distributed to the county treasurer and the county treasurer will distribute to the county and to the cities and towns therein based on a ratio established by the industrial siting council during a public hearing held in accordance with W.S. ~~35-12-110~~ 35-12-110(f)(i). The industrial siting council shall review the distribution ratio for construction projects on a regular basis and make appropriate adjustments. A governing body which is primarily affected by the facility, or any person issued a permit pursuant to W.S. 35-12-106, may petition the industrial siting council for review and

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adjustment of the distribution ratio or the amount of the impact assistance payment upon a showing of good cause. The impact assistance payment shall be in addition to all other distributions under this section, but no impact assistance payment shall be made for any period in which the county or counties are not imposing at least a one percent (1%) tax authorized by W.S. 39-15-204(a)(i) and 39-16-204(a)(i) or at least a total of a two percent (2%) sales tax authorized under W.S. 39-15-204(a)(i), (iii) and (vi) and at least a total of a two percent (2%) use tax authorized under W.S. 39-16-204(a)(i), (ii) and (v). For purposes of this subsection, the industrial facility or federal or state government project will be deemed to be located in the county in which a majority of the construction costs will be expended, provided that upon a request from the county commissioners of an adjoining county to the industrial siting council, the council may determine that the social and economic impacts from construction of the industrial facility or federal or state government project upon the adjoining county are significant and establish the ratio of impacts between the counties and certify that ratio to the ~~state treasurer~~ department of revenue who will thereafter distribute the impact assistance payment to the counties pursuant to that ratio. The industrial siting council shall adopt rules as necessary to implement this subsection.

(e) As used in subsection (d) of this section:

(i) "Period of construction" begins at the commencement of construction and ends when the physical components of the industrial facility or federal or state government project are ninety percent (90%) complete, and provided, if payments are already being made under this act, commencement of construction of another industrial facility or federal or state government project will not be considered for purposes of establishing a new ~~base period~~

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impact assistance payment amount or determining when payments will commence under this act, but will only be considered for determining when the period of construction ends;

Section 2. W.S. 39-15-111(d)(ii) and 39-16-111(e)(ii) are repealed.

Section 3. This act shall only apply to permits submitted to the council on or after the effective date of this act. The impact assistance payment for industrial facilities which are not subject to this act shall be determined on the basis of the law as it existed prior to the adoption of this act.

Section 4. There is appropriated forty thousand dollars (\$40,000.00) from the general fund to the department of environmental quality, industrial siting division to contract with a consultant for the purpose of assisting with the timely development of the criteria to be used by the industrial siting council in making impact assistance decisions pursuant to this act. This is a one-time appropriation and shall not be included in the department's 2017-2018 standard budget request.

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Section 5. This act is effective July 1, 2015.

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the House.

Chief Clerk