

HOUSE BILL NO. HB0152

Industrial siting impact payments.

Sponsored by: Representative(s) Madden and Burkhart and
Senator(s) Case and Nicholas, P.

A BILL

for

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

8

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

10

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

13

14 **35-12-105. Appointment and duties of administrator;**
15 **staff; rules and regulations.**

1

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

10

11 **39-15-111. Distribution.**

12

13 (c) If any person commences after the effective date
14 of this act to construct an industrial facility, as that
15 term is defined in W.S. 35-12-102, under a permit issued
16 pursuant to W.S. 35-12-106, or if the federal or state
17 government commences to construct any project within this
18 state with an estimated construction cost as specified in
19 the definition of industrial facility in W.S. 35-12-102 the
20 state treasurer shall thereafter pay to the county
21 treasurer and the county treasurer will distribute to the
22 county, cities and towns of that county in which the
23 industrial facility or project is located, impact

1 assistance payments from the monies available under
2 paragraph (b)(i) of this section. Each payment to the
3 county treasurer shall be equal to ~~the excess of each~~
4 ~~monthly payment made under paragraph (b)(iii) of this~~
5 ~~section during the period of construction over the base~~
6 ~~period amount~~ an amount determined by the industrial siting
7 council under this subsection and shall continue during the
8 period of construction except that in the case of an
9 industrial facility or a federal or state government
10 project which is expected to continue in phases for an
11 indefinite period of time, the state treasurer shall
12 discontinue payments under this section ~~and establish a new~~
13 ~~base period~~ when construction of any phase has ceased or
14 been substantially completed for twelve (12) consecutive
15 months. The person constructing the industrial facility and
16 the counties affected by the construction of the industrial
17 facility shall provide evidence at the public hearing held
18 pursuant to W.S. 35-12-110(f)(i) of the mitigated and
19 unmitigated impacts that the construction will have on the
20 counties, cities and towns determined by the industrial
21 siting council to be affected by the construction of the
22 industrial facility. The industrial siting council shall
23 review the evidence of the impacts and determine, applying

1 a preponderance of evidence standard, the dollar amount of
2 the unmitigated impacts. The council shall state, in the
3 order issued under W.S. 35-12-113(a), the total dollar
4 amount of the impact assistance payment and the reasons for
5 determining that amount. The impact assistance payment
6 shall be distributed by the state treasurer in an amount
7 and on a schedule determined by the council, based on
8 evidence presented at the hearing. Under no circumstances
9 shall the impact assistance payment exceed two and seventy-
10 six hundredths percent (2.76%) of the total estimated
11 material costs of the facility, as those costs are
12 determined by the council. The impact assistance payments
13 shall be distributed to the county treasurer and the county
14 treasurer will distribute to the county and to the cities
15 and towns therein based on a ratio established by the
16 industrial siting council during a public hearing held in
17 accordance with W.S. ~~35-12-110~~ 35-12-110(f)(i). The
18 industrial siting council shall review the distribution
19 ratio for construction projects on a regular basis and make
20 appropriate adjustments. A governing body which is
21 primarily affected by the facility, or any person issued a
22 permit pursuant to W.S. 35-12-106, may petition the
23 industrial siting council for review and adjustment of the

1 distribution ratio or the amount of the impact assistance
2 payment upon a showing of good cause. The impact assistance
3 payment shall be in addition to all other distributions
4 under this section, but no impact assistance payment shall
5 be made for any period in which the county or counties are
6 not imposing at least a one percent (1%) tax authorized by
7 W.S. 39-15-204(a)(i) and 39-16-204(a)(i) or at least a
8 total of a two percent (2%) sales tax authorized under W.S.
9 39-15-204(a)(i), (iii) and (vi) and at least a total of a
10 two percent (2%) use tax authorized under W.S.
11 39-16-204(a)(i), (ii) and (v). For purposes of this
12 subsection, the industrial facility or federal or state
13 government project will be deemed to be located in the
14 county in which a majority of the construction costs will
15 be expended, provided that upon a request from the county
16 commissioners of any adjoining county to the industrial
17 siting council, the council may determine that the social
18 and economic impacts from construction of the industrial
19 facility or federal or state government project upon the
20 adjoining county are significant and establish the ratio of
21 impacts between the counties and certify that ratio to the
22 state treasurer who will thereafter distribute the impact
23 assistance payment to the counties pursuant to that ratio.

1 The industrial siting council shall adopt rules as
2 necessary to implement this subsection.

3
4 (d) As used in subsection (c) of this section:

5
6 (i) "Period of construction" begins at the
7 commencement of construction and ends when the physical
8 components of the industrial facility or federal or state
9 government project are ninety percent (90%) complete,
10 provided, if payments are already being made under this
11 act, commencement of construction of another industrial
12 facility or federal or state government project will not be
13 considered for purposes of establishing a new ~~base period~~
14 impact assistance payment amount or determining when
15 payments will commence under this act, but will only be
16 considered for determining when the period of construction
17 ends;

18
19 **39-16-111. Distribution.**

20
21 (d) If any person commences after the effective date
22 of this act to construct an industrial facility, as that
23 term is defined in W.S. 35-12-102, under a permit issued

1 pursuant to W.S. 35-12-106, or if the federal or state
2 government commences to construct any project within this
3 state with an estimated construction cost as specified in
4 the definition of industrial facility in W.S. 35-12-102 the
5 state treasurer shall thereafter pay to the county
6 treasurer and the county treasurer will distribute to the
7 county, cities and towns of that county in which the
8 industrial facility or project is located, impact
9 assistance payments from the monies available under
10 paragraph (b)(i) of this section. Each payment to the
11 county treasurer shall be equal to ~~the excess of each~~
12 ~~monthly payment made under paragraph (b)(iii) of this~~
13 ~~section during the period of construction over the base~~
14 ~~period amount~~ an amount determined by the industrial siting
15 council under this subsection and shall continue during the
16 period of construction except that in the case of an
17 industrial facility or a federal or state government
18 project which is expected to continue in phases for an
19 indefinite period of time, the state treasurer shall
20 discontinue payments under this section ~~and establish a new~~
21 ~~base period~~ when construction of any phase has ceased or
22 been substantially completed for twelve (12) consecutive
23 months. The person constructing the industrial facility and

1 the counties affected by the construction of the industrial
2 facility shall provide evidence at the public hearing held
3 pursuant to W.S. 35-12-110(f)(i) of the mitigated and
4 unmitigated impacts that the construction will have on the
5 counties, cities and towns determined by the industrial
6 siting council to be affected by the construction of the
7 industrial facility. The industrial siting council shall
8 review the evidence of the impacts and determine, applying
9 a preponderance of evidence standard, the dollar amount of
10 the unmitigated impacts. The council shall state, in the
11 order issued under W.S. 35-12-113(a), the total dollar
12 amount of the impact assistance payment and the reasons for
13 determining that amount. The impact assistance payment
14 shall be distributed by the state treasurer in an amount
15 and on a schedule determined by the council, based on
16 evidence presented at the hearing. Under no circumstances
17 shall the impact assistance payment exceed two and seventy-
18 six hundredths percent (2.76%) of the total estimated
19 material costs of the facility, as those costs are
20 determined by the council. The impact assistance payments
21 shall be distributed to the county treasurer and the county
22 treasurer will distribute to the county and to the cities
23 and towns therein based on a ratio established by the

1 industrial siting council during a public hearing held in
2 accordance with W.S. ~~35-12-110~~ 35-12-110(f)(i). The
3 industrial siting council shall review the distribution
4 ratio for construction projects on a regular basis and make
5 appropriate adjustments. A governing body which is
6 primarily affected by the facility, or any person issued a
7 permit pursuant to W.S. 35-12-106, may petition the
8 industrial siting council for review and adjustment of the
9 distribution ratio or the amount of the impact assistance
10 payment upon a showing of good cause. The impact
11 assistance payment shall be in addition to all other
12 distributions under this section, but no impact assistance
13 payment shall be made for any period in which the county or
14 counties are not imposing at least a one percent (1%) tax
15 authorized by W.S. 39-15-204(a)(i) and 39-16-204(a)(i) or
16 at least a total of a two percent (2%) sales tax authorized
17 under W.S. 39-15-204(a)(i), (iii) and (vi) and at least a
18 total of a two percent (2%) use tax authorized under W.S.
19 39-16-204(a)(i), (ii) and (v). For purposes of this
20 subsection, the industrial facility or federal or state
21 government project will be deemed to be located in the
22 county in which a majority of the construction costs will
23 be expended, provided that upon a request from the county

1 commissioners of an adjoining county to the industrial
2 siting council, the council may determine that the social
3 and economic impacts from construction of the industrial
4 facility or federal or state government project upon the
5 adjoining county are significant and establish the ratio of
6 impacts between the counties and certify that ratio to the
7 state treasurer who will thereafter distribute the impact
8 assistance payment to the counties pursuant to that ratio.

9 The industrial siting council shall adopt rules as
10 necessary to implement this subsection.

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

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

1 considered for determining when the period of construction
2 ends;

3

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

6

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

13

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

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