

HOUSE BILL NO. HB0047

Local impact assistance payments.

Sponsored by: Joint Minerals, Business & Economic
Development Interim Committee

A BILL

for

1 AN ACT relating to impact assistance payments; amending
2 requirements related to impact assistance payments;
3 providing definitions; requiring reporting; specifying
4 applicability; and providing for an effective date.

5

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

7

8 **Section 1.** W.S. 39-15-111(c) and (d) by creating a
9 new paragraph (iii) and 39-16-111(d) and (e) by creating a
10 new paragraph (iii) are amended to read:

11

12 **39-15-111. Distribution.**

13

14 (c) If any person commences after the effective date
15 of this act to construct an industrial facility, as that

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

1 to W.S. 35-12-110(f)(i) of the mitigated and unmitigated
2 impacts that the construction will have on the counties,
3 cities and towns determined by the industrial siting
4 council to be affected by the construction of the
5 industrial facility. The industrial siting council shall
6 review the evidence of the impacts and determine, applying
7 a preponderance of evidence standard, the dollar amount of
8 the unmitigated impacts. The council shall state, in the
9 order issued under W.S. 35-12-113(a), the total dollar
10 amount of the impact assistance payment and ~~the reasons for~~
11 ~~determining that~~ include specific findings of fact
12 detailing the basis for the total dollar amount
13 determination and if requested by the affected county, city
14 or town, its justification for rejecting, in whole or in
15 part, an application for an impact assistance payment. The
16 impact assistance payment shall be distributed by the
17 department of revenue in an amount and on a schedule
18 determined by the council, based on evidence presented at
19 the hearing. Under no circumstances shall the total dollar
20 amount of the impact assistance payment exceed ~~two and~~
21 ~~seventy-six hundredths percent (2.76%)~~ the maximum
22 allowable percentage specified in this subsection of the
23 total estimated material costs of the facility, as those

1 costs are determined by the council. The maximum allowable
2 percentage shall be two and twenty-five hundredths percent
3 (2.25%) for facilities with total estimated materials costs
4 of three hundred fifty million dollars (\$350,000,000.00) or
5 less except as otherwise provided in this subsection, two
6 percent (2%) for facilities with total estimated materials
7 costs in excess of three hundred fifty million dollars
8 (\$350,000,000.00) but less than eight hundred fifty million
9 dollars (\$850,000,000.00) and one and one-half percent
10 (1.50%) for facilities with total estimated materials costs
11 of eight hundred fifty million dollars (\$850,000,000.00) or
12 more. For facilities with total estimated materials costs
13 of three hundred fifty million dollars (\$350,000,000.00) or
14 less, the council may increase the maximum allowable
15 percentage to not more than two and fifty-five hundredths
16 percent (2.55%) if the council includes in the specific
17 findings required under this subsection that the maximum
18 allowable percentage of two and twenty-five hundredths
19 percent (2.25%) is insufficient to mitigate the identified
20 impacts. The council shall submit a report to the joint
21 appropriations committee and the joint minerals, business
22 and economic development interim committee not later than
23 ten (10) business days after increasing the maximum

1 allowable percentage as specified in this subsection,
2 including data to support the increase. The impact
3 assistance payments shall be distributed to the county
4 treasurer and the county treasurer will distribute to the
5 county and to the cities and towns therein based on a ratio
6 established by the industrial siting council during a
7 public hearing held in accordance with W.S.
8 35-12-110(f)(i). In determining the distribution ratio, the
9 industrial siting council may consider the extent and
10 location of the unmitigated impacts, the populations of the
11 affected counties, cities and towns, including any
12 disproportionate impacts on smaller communities, and any
13 other equitable factor. The industrial siting council shall
14 review the distribution ratio for construction projects on
15 a regular basis and make appropriate adjustments. A
16 governing body which is primarily affected by the facility,
17 or any person issued a permit pursuant to W.S. 35-12-106,
18 may petition the industrial siting council for review and
19 adjustment of the distribution ratio or the amount of the
20 impact assistance payment upon a showing of good cause. The
21 impact assistance payment shall be in addition to all other
22 distributions under this section, but no impact assistance
23 payment shall be made for any period in which the county or

1 counties are not imposing at least a one percent (1%) tax
2 authorized by W.S. 39-15-204(a)(i) and 39-16-204(a)(i) or
3 at least a total of a two percent (2%) sales tax authorized
4 under W.S. 39-15-204(a)(i), (iii) and (vi) and at least a
5 total of a two percent (2%) use tax authorized under W.S.
6 39-16-204(a)(i), (ii) and (v). For purposes of this
7 subsection, the industrial facility or federal or state
8 government project will be deemed to be located in the
9 county in which a majority of the construction costs will
10 be expended, provided that upon a request from the county
11 commissioners of any adjoining county to the industrial
12 siting council, the council may determine that the social
13 and economic impacts from construction of the industrial
14 facility or federal or state government project upon the
15 adjoining county are significant and establish the ratio of
16 impacts between the counties and certify that ratio to the
17 department of revenue who will thereafter distribute the
18 impact assistance payment to the counties pursuant to that
19 ratio. Each county, city and town that receives a
20 distribution under this subsection shall provide an annual
21 report to the industrial siting council describing how the
22 impact assistance payment was expended. The report shall
23 first be submitted not later than one (1) year after the

1 impact assistance payment is approved and annually each
2 year thereafter for the duration in which distributions are
3 made and until all distributions are expended. The
4 industrial siting council shall adopt rules as necessary to
5 implement this subsection.

6

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

8

9 (iii) "Unmitigated impact" means an expense:

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11 (A) Incurred by a county, city or town
12 directly or indirectly attributable to the construction of
13 an industrial facility;

14

15 (B) That is not otherwise mitigated by any
16 other entity;

17

18 (C) For medical services, fire and law
19 enforcement services, roads and public utilities. Expenses
20 shall be supported by an analysis prepared by the county,
21 city or town of the current excess capacity in each of
22 these areas. Expenses in these areas may include the
23 employment of additional employees or officers only if the

1 county, city or town has determined overtime compensation
2 or contract labor would not be appropriate; and

3

4 (D) Excluding expenses for which a county,
5 city or town previously received an impact assistance
6 payment unless the county, city or town can demonstrate the
7 expenses are new or ongoing.

8

9 **39-16-111. Distribution.**

10

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

1 county treasurer shall be equal to an amount determined by
2 the industrial siting council under this subsection and
3 shall continue during the period of construction except
4 that in the case of an industrial facility or a federal or
5 state government project which is expected to continue in
6 phases for an indefinite period of time, the department of
7 revenue shall discontinue payments under this section when
8 construction of any phase has ceased or been substantially
9 completed for twelve (12) consecutive months. The person
10 constructing the industrial facility and the counties
11 affected by the construction of the industrial facility
12 shall provide evidence at the public hearing held pursuant
13 to W.S. 35-12-110(f)(i) of the mitigated and unmitigated
14 impacts that the construction will have on the counties,
15 cities and towns determined by the industrial siting
16 council to be affected by the construction of the
17 industrial facility. The industrial siting council shall
18 review the evidence of the impacts and determine, applying
19 a preponderance of evidence standard, the dollar amount of
20 the unmitigated impacts. The council shall state, in the
21 order issued under W.S. 35-12-113(a), the total dollar
22 amount of the impact assistance payment and ~~the reasons for~~
23 ~~determining that~~ include specific findings of fact

1 detailing the basis for the total dollar amount
2 determination and if requested by the affected county, city
3 or town, its justification for rejecting, in whole or in
4 part, an application for an impact assistance payment. The
5 impact assistance payment shall be distributed by the
6 department of revenue in an amount and on a schedule
7 determined by the council, based on evidence presented at
8 the hearing. Under no circumstances shall the total dollar
9 amount of the impact assistance payment exceed ~~two and~~
10 ~~seventy six hundredths percent (2.76%)~~ the maximum
11 allowable percentage specified in this subsection of the
12 total estimated material costs of the facility, as those
13 costs are determined by the council. The maximum allowable
14 percentage shall be two and twenty-five hundredths percent
15 (2.25%) for facilities with total estimated materials costs
16 of three hundred fifty million dollars (\$350,000,000.00) or
17 less except as otherwise provided in this subsection, two
18 percent (2%) for facilities with total estimated materials
19 costs in excess of three hundred fifty million dollars
20 (\$350,000,000.00) but less than eight hundred fifty million
21 dollars (\$850,000,000.00) and one and one-half percent
22 (1.50%) for facilities with total estimated materials costs
23 of eight hundred fifty million dollars (\$850,000,000.00) or

1 more. For facilities with total estimated materials costs
2 of three hundred fifty million dollars (\$350,000,000.00) or
3 less, the council may increase the maximum allowable
4 percentage to not more than two and fifty-five hundredths
5 percent (2.55%) if the council includes in the specific
6 findings required under this subsection that the maximum
7 allowable percentage of two and twenty-five hundredths
8 percent (2.25%) is insufficient to mitigate the identified
9 impacts. The council shall submit a report to the joint
10 appropriations committee and the joint minerals, business
11 and economic development interim committee not later than
12 ten (10) business days after increasing the maximum
13 allowable percentage as specified in this subsection,
14 including data to support the increase. The impact
15 assistance payments shall be distributed to the county
16 treasurer and the county treasurer will distribute to the
17 county and to the cities and towns therein based on a ratio
18 established by the industrial siting council during a
19 public hearing held in accordance with W.S.
20 35-12-110(f)(i). In determining the distribution ratio, the
21 industrial siting council may consider the extent and
22 location of the unmitigated impacts, the populations of the
23 affected counties, cities and towns, including any

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

1 county to the industrial siting council, the council may
2 determine that the social and economic impacts from
3 construction of the industrial facility or federal or state
4 government project upon the adjoining county are
5 significant and establish the ratio of impacts between the
6 counties and certify that ratio to the department of
7 revenue who will thereafter distribute the impact
8 assistance payment to the counties pursuant to that ratio.
9 Each county, city and town that receives a distribution
10 under this subsection shall provide an annual report to the
11 industrial siting council describing how the impact
12 assistance payment was expended. The report shall first be
13 submitted not later than one (1) year after the impact
14 assistance payment is approved and annually each year
15 thereafter for the duration in which distributions are made
16 and until all distributions are expended. The industrial
17 siting council shall adopt rules as necessary to implement
18 this subsection.

19

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

21

22 (iii) "Unmitigated impact" means as defined by

23 W.S. 39-15-111(d)(iii).

1

2 **Section 2.** This act shall only apply to impact
3 assistance payments for industrial facility permit
4 applications submitted on or after the effective date of
5 this act. The impact assistance payments for industrial
6 facilities that are not subject to this act shall be
7 determined on the basis of the law as it existed at the
8 time the request for the impact assistance payment was
9 submitted to the industrial siting council.

10

11 **Section 3.** This act is effective July 1, 2022.

12

13

(END)