

HOUSE BILL NO. HB0051

Industrial siting impact payments.

Sponsored by: Representative(s) Madden, Stubson and Throne
and Senator(s) Case and Schiffer

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
4 industrial facility permit fees; revising how impact
5 assistance payment amounts are calculated; providing
6 rulemaking authority; repealing conflicting provisions;
7 providing applicability; providing an appropriation; and
8 providing for an effective date.

9

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

11

12 **Section 1.** W.S. 35-12-105(c), 35-12-109(b),
13 39-15-111(c) and (d)(i) and 39-16-111(d) and (e)(i) are
14 amended to read:

15

1 **35-12-105. Appointment and duties of administrator;**
2 **staff; rules and regulations.**

3

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

12

13 **35-12-109. Application for permit; form; fee;**
14 **financial accounting.**

15

16 (b) At the time of filing an application or a written
17 request for a waiver of the application provisions of this
18 chapter as provided in W.S. 35-12-107, or as subsequently
19 required by the director, an applicant shall pay a fee to
20 be determined by the director based upon the estimated cost
21 of investigating, reviewing, processing and serving notice
22 of an application, holding a hearing in case of a request
23 for waiver, inspection and compliance activities and
24 processing application update requests. The fee shall be

1 credited to a separate account and shall be used by the
2 division as required to investigate, review, process and
3 serve notice of the application, to hold a hearing in case
4 of a request for waiver and to pay the reasonable costs of
5 any meeting or hearing associated with permit compliance.
6 Unused fees shall be refunded to the applicant. The maximum
7 fee chargeable shall not exceed one-half of one percent
8 (0.5%) of the estimated construction cost of the facility
9 or ~~one hundred thousand dollars (\$100,000.00)~~ one hundred
10 twenty-five thousand dollars (\$125,000.00), whichever is
11 less.

12

13 **39-15-111. Distribution.**

14

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

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

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

1

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

3

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

16

17 **39-16-111. Distribution.**

18

19 (d) If any person commences after the effective date
20 of this act to construct an industrial facility, as that
21 term is defined in W.S. 35-12-102, under a permit issued
22 pursuant to W.S. 35-12-106, or if the federal or state
23 government commences to construct any project within this
24 state with an estimated construction cost as specified in

1 the definition of industrial facility in W.S. 35-12-102 the
2 state treasurer shall thereafter pay to the county
3 treasurer and the county treasurer will distribute to the
4 county, cities and towns of that county in which the
5 industrial facility or project is located, impact
6 assistance payments from the monies available under
7 paragraph (b)(i) of this section. Each payment to the
8 county treasurer shall be equal to ~~the excess of each~~
9 ~~monthly payment made under paragraph (b)(iii) of this~~
10 ~~section during the period of construction over the base~~
11 ~~period amount~~ an amount determined by the industrial siting
12 council under this subsection and shall continue during the
13 period of construction except that in the case of an
14 industrial facility or a federal or state government
15 project which is expected to continue in phases for an
16 indefinite period of time, the state treasurer shall
17 discontinue payments under this section ~~and establish a new~~
18 ~~base period~~ when construction of any phase has ceased or
19 been substantially completed for twelve (12) consecutive
20 months. The person constructing the industrial facility and
21 the counties affected by the construction of the industrial
22 facility shall provide evidence at the public hearing held
23 pursuant to W.S. 35-12-110(f)(i) of the mitigated and
24 unmitigated impacts that the construction will have on the

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

1 not imposing at least a one percent (1%) tax authorized by
2 W.S. 39-15-204(a)(i) and 39-16-204(a)(i) or at least a
3 total of a two percent (2%) sales tax authorized under W.S.
4 39-15-204(a)(i), (iii) and (vi) and at least a total of a
5 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 an 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 state treasurer who will thereafter distribute the impact
18 assistance payment to the counties pursuant to that ratio.
19 The industrial siting council shall adopt rules as
20 necessary to implement this subsection.

21

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

23

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

13

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

16

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

23

1 **Section 4.** There is appropriated forty thousand
2 dollars (\$40,000.00) from the general fund to the
3 department of environmental quality, industrial siting
4 division to contract with a consultant for the purpose of
5 assisting with the timely development of the criteria to be
6 used by the industrial siting council in making impact
7 assistance decisions pursuant to this act. This is a one-
8 time appropriation, and shall not be included in the
9 department's 2015-2016 standard budget request.

10

11 **Section 5.** This act is effective July 1, 2012.

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13

(END)