

ENROLLED ACT NO. 24, HOUSE OF REPRESENTATIVES

SIXTY-SIXTH LEGISLATURE OF THE STATE OF WYOMING
2022 BUDGET SESSION

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

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

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

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 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 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 department of revenue shall discontinue payments under this section when construction of any phase has ceased or been substantially completed for twelve (12) consecutive months. The person

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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~~ include specific findings of fact detailing the basis for the total dollar amount determination and if requested by the affected county, city or town, its justification for rejecting, in whole or in part, an application for an impact assistance payment. 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 total dollar amount of the impact assistance payment exceed ~~two and seventy-six hundredths percent (2.76%)~~ the maximum allowable percentage specified in this subsection of the total estimated material costs of the facility, as those costs are determined by the council. The maximum allowable percentage shall be two and twenty-five hundredths percent (2.25%) for facilities with total estimated materials costs of three hundred fifty million dollars (\$350,000,000.00) or less except as otherwise provided in this subsection, two percent (2%) for facilities with total estimated materials costs in excess of three hundred fifty million dollars (\$350,000,000.00) but less than eight hundred fifty million dollars (\$850,000,000.00) and one and one-half percent

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(1.50%) for facilities with total estimated materials costs of eight hundred fifty million dollars (\$850,000,000.00) or more. For facilities with total estimated materials costs of three hundred fifty million dollars (\$350,000,000.00) or less, the council may increase the maximum allowable percentage to not more than two and seventy-six hundredths percent (2.76%) if the council includes in the specific findings required under this subsection that the maximum allowable percentage of two and twenty-five hundredths percent (2.25%) is insufficient to mitigate the identified impacts. The council shall submit a report to the joint appropriations committee and the joint minerals, business and economic development interim committee not later than ten (10) business days after increasing the maximum allowable percentage as specified in this subsection, including data to support the increase. 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(f)(i). In determining the distribution ratio, the industrial siting council may consider the extent and location of the unmitigated impacts, the populations of the affected counties, cities and towns, including any disproportionate impacts on smaller communities, and any other equitable factor. 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

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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 department of revenue who will thereafter distribute the impact assistance payment to the counties pursuant to that ratio. Each county, city and town that receives a distribution under this subsection shall provide an annual report to the industrial siting council describing how the impact assistance payment was expended. The report shall first be submitted not later than one (1) year after the impact assistance payment is approved and annually each year thereafter for the duration in which distributions are made and until all distributions are expended. The industrial siting council shall adopt rules as necessary to implement this subsection.

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

(iii) "Unmitigated impact" means an expense:

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

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

(C) For medical services, fire and law enforcement services, roads and public utilities. Expenses shall be supported by an analysis prepared by the county, city or town of the current excess capacity in each of these areas. Expenses in these areas may include the employment of additional employees or officers only if the county, city or town has determined overtime compensation or contract labor would not be appropriate; and

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

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 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

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paragraph (b)(i) of this section. Each payment to the county treasurer shall be equal to 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 department of revenue shall discontinue payments under this section 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~~ include specific findings of fact detailing the basis for the total dollar amount determination and if requested by the affected county, city or town, its justification for rejecting, in whole or in part, an application for an impact assistance payment. 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 total dollar amount of the impact assistance payment exceed ~~two and seventy six hundredths percent (2.76%)~~ the maximum allowable percentage specified in this subsection of the

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total estimated material costs of the facility, as those costs are determined by the council. The maximum allowable percentage shall be two and twenty-five hundredths percent (2.25%) for facilities with total estimated materials costs of three hundred fifty million dollars (\$350,000,000.00) or less except as otherwise provided in this subsection, two percent (2%) for facilities with total estimated materials costs in excess of three hundred fifty million dollars (\$350,000,000.00) but less than eight hundred fifty million dollars (\$850,000,000.00) and one and one-half percent (1.50%) for facilities with total estimated materials costs of eight hundred fifty million dollars (\$850,000,000.00) or more. For facilities with total estimated materials costs of three hundred fifty million dollars (\$350,000,000.00) or less, the council may increase the maximum allowable percentage to not more than two and seventy-six hundredths percent (2.76%) if the council includes in the specific findings required under this subsection that the maximum allowable percentage of two and twenty-five hundredths percent (2.25%) is insufficient to mitigate the identified impacts. The council shall submit a report to the joint appropriations committee and the joint minerals, business and economic development interim committee not later than ten (10) business days after increasing the maximum allowable percentage as specified in this subsection, including data to support the increase. 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(f)(i). In determining the distribution ratio, the industrial siting council may consider the extent and location of the unmitigated impacts, the populations of the affected counties, cities and towns, including any

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disproportionate impacts on smaller communities, and any other equitable factor. 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 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 department of revenue who will thereafter distribute the impact assistance payment to the counties pursuant to that ratio. Each county, city and town that receives a distribution under this subsection shall provide an annual report to the industrial siting council describing how the impact assistance payment was expended. The report shall first be

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submitted not later than one (1) year after the impact assistance payment is approved and annually each year thereafter for the duration in which distributions are made and until all distributions are expended. The industrial siting council shall adopt rules as necessary to implement this subsection.

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

(iii) "Unmitigated impact" means as defined by W.S. 39-15-111(d)(iii).

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

ORIGINAL HOUSE
BILL NO. HB0047

ENGROSSED

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

(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