

SENATE FILE NO. SF0066

Industrial siting amendments.

Sponsored by: Senator(s) Perkins, Anderson, J. and Martin
and Representative(s) Anderson, R., Carson,
Steward and Stubson

A BILL

for

1 AN ACT relating to industrial siting; amending
2 jurisdictional criteria; amending and adding definitions;
3 expanding and modifying notice provisions; granting
4 rulemaking authority as specified; modifying the
5 information necessary in permit and waiver applications;
6 expanding the number of state agencies involved in
7 permitting; specifying additional issues to consider in the
8 permitting process; requiring additional fees; defining
9 prohibited activities; modifying exempt facilities;
10 providing exceptions to hearing requirements; providing
11 additional requirements and jurisdiction for wind energy
12 facilities; repealing laws regarding incomplete
13 applications; and providing for an effective date.

14

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

16

1 **Section 1.** W.S. 35-12-102(a)(vii)(C), by creating a
2 new subparagraph (E), (xi) and by creating a new paragraph
3 (xiv), 35-12-105 by creating new subsections (d) and (e),
4 35-12-106(c) and (d), 35-12-107(b)(viii), by creating new
5 paragraphs (xii) through (xiv), (h)(i), (ii), by creating a
6 new paragraph (iii), (j)(ii), (iii) and by creating a new
7 paragraph (iv), 35-12-109(a)(xiii)(intro), by creating new
8 subparagraphs (Q) through (S), (xviii), by creating new
9 paragraphs (xix) through (xxi), (b), (c) and by creating a
10 new subsection (d), 35-12-110(a)(i), (b)(xv), (xvi), by
11 creating new paragraphs (xvii) through (xxii), (e)(i) and
12 (ii), 35-12-111(a)(ii) and (iii), 35-12-113(a)(ii), (iii),
13 by creating a new paragraph (iv) and by creating a new
14 subsection (h), 35-12-118(a)(ii), (iii) and by creating a
15 new paragraph (iv) and 35-12-119(c)(i) are amended to read:

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17 **35-12-102. Definitions.**

18

19 (a) As used in this chapter:

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21 (vii) "Industrial facility" or "facility" means
22 any industrial facility with an estimated construction cost
23 of at least ninety-six million nine hundred thousand
24 dollars (\$96,900,000.00) as of May 30, 1987. Exempt

1 activities shall not be included in the estimated
2 construction cost of an industrial facility. The council
3 shall adjust this amount, up or down, each year using
4 recognized construction cost indices as the council
5 determines to be relevant to the actual change in
6 construction cost applicable to the general type of
7 construction covered under this chapter. "Facility" also
8 includes, regardless of construction cost:

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10 (C) Any commercial radioactive waste
11 management facility defined by W.S. 35-11-103(d)(v); ~~and~~

12

13 (E) Any commercial facility generating
14 electricity from wind and associated collector systems
15 that:

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17 (I) Consists of thirty (30) or more
18 wind turbines in all planned phases of the installation; or

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20 (II) Expand an existing installation
21 not previously defined as a facility to include a total
22 number of turbines greater than or equal to the thresholds
23 in subdivision (a)(vii)(E)(I) of this section.

24

1 (xi) "Person" includes an individual, group,
2 firm, partnership, corporation, cooperative, association,
3 or other entity excluding the state, federal government and
4 local government. "Person" also includes the parent
5 company, partnership or holding entity for a commercial
6 facility generating electricity from wind;

7
8 (xiv) "Collector system" means the electrical
9 transmission infrastructure, including transmission lines,
10 towers, substations, switchgear and other components
11 necessary to deliver power from any commercial facility
12 generating electricity from wind up to, but not including,
13 electric substations or similar facilities necessary to
14 interconnect to existing or proposed transmission lines.

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16 **35-12-105. Appointment and duties of administrator;**
17 **staff; rules and regulations.**

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19 (d) In addition to the rules and regulations adopted
20 under subsection (b) of this section, the council shall
21 promulgate rules and regulations prescribing
22 decommissioning and site reclamation standards for
23 facilities permitted pursuant to W.S. 35-12-102(a)(vii)(E).
24 Such standards shall be designed to assure the proper

1 decommissioning and interim and final site reclamation of
2 commercial facilities generating electricity from wind
3 during construction and operation of the facility, at the
4 end of their useful life, upon revocation of a permit
5 authorizing their operation or upon the happening of any
6 event which causes operations to cease.

7
8 (e) In addition to the rules and regulations adopted
9 under subsection (b) of this section, the council shall
10 promulgate rules and regulations prescribing financial
11 assurance requirements for facilities permitted pursuant to
12 W.S. 35-12-102(a)(vii)(E). These rules and regulations
13 shall not apply to facilities that are public utilities and
14 regulated by the Wyoming public service commission. The
15 rules and regulations shall be designed to provide adequate
16 assurance that the permitted facilities will be properly
17 reclaimed and decommissioned when appropriate. The
18 elements to consider when establishing adequate levels of
19 financial assurance shall include credit worthiness,
20 financial strength, credit history, credit rating and any
21 other factors that reasonably bear on the decision to
22 accept a financial assurance. The financial assurance may
23 be in any form acceptable to the council and can include a

1 corporate guarantee, letter of credit, bond, deposit
2 account or insurance policy.

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4 **35-12-106. Permit from council required prior to**
5 **commencing construction of facility; electronic permitting;**
6 **amendments; exceptions.**

7

8 (c) Except as provided in subsection (d) of this
9 section, the council may allow the amendment of a permit
10 or application for a permit for good cause if the holder
11 demonstrates to the council at its next meeting that the
12 requested change is in compliance with local ordinances and
13 applicable land use plans and will not significantly add to
14 adverse environmental, social and economic impact in the
15 ~~county~~ impacted area.

16

17 (d) On an application for an amendment of a permit,
18 the council shall hold a hearing in the same manner as a
19 hearing is held on an application for a permit if in the
20 council's opinion the requested change in the facility
21 would result in a significant adverse increase in any
22 environmental, social or economic impact of the facility or
23 a change in the location of all or a portion of the
24 facility ~~except as otherwise provided in the original~~

1 ~~application for alternate locations for the facility unless~~
2 the change in location was specifically approved by the
3 council in the permit.

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5 **35-12-107. Request for waiver of permit application;**
6 **form.**

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8 (b) A request for a waiver shall be filed with the
9 division, in a form as prescribed by council rules and
10 regulations, and shall contain the following information:

11
12 (viii) A ~~brief~~ description of the methods and
13 strategies the applicant will use to maximize the
14 employment and utilization of the existing local or in-
15 state contractors and labor force during the construction
16 and operation of the facility;

17
18 (xii) Certification that the governing bodies of
19 all local governments within the potentially impacted area
20 were provided notification, a description of the proposed
21 project and an opportunity to ask the applicant questions
22 at least thirty (30) days prior to submission of the
23 application;

24

1 (xiii) For facilities permitted pursuant to W.S.
2 35-12-102(a)(vii)(E), a site reclamation and
3 decommissioning plan, which shall be updated every five (5)
4 years and a description of a financial assurance plan which
5 will assure that all facilities will be properly reclaimed
6 and decommissioned. All such plans, unless otherwise
7 exempt, shall demonstrate compliance with any rules or
8 regulations adopted by the council pursuant to W.S.
9 35-12-105(d) and (e);

10
11 (xiv) Information demonstrating the applicant's
12 financial capability to construct, maintain, operate,
13 decommission and reclaim the facility.

14
15 (h) The applicant shall present any evidence
16 necessary to demonstrate to the council:

17
18 (i) That the facility would not produce an
19 unacceptable environmental, social or economic impact;~~and~~

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21 (ii) That the applicant has reached agreement
22 with local governments affected by the facility on the
23 mitigation required to alleviate adverse effects resulting
24 from the facility;~~and~~ and

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(iii) That the applicant has financial resources to construct, maintain, operate, decommission and reclaim the facility.

(j) Within ten (10) days from the date of completion of the hearing the council shall make complete findings, issue an opinion and render a decision upon the record, either granting or denying the request for a waiver. The council shall grant a request for a waiver either as proposed or as modified by the council if it finds and determines that:

(ii) The applicant has discussed the proposed facility with all local governments potentially affected by the project;~~and~~

(iii) The proposed facility is in compliance with all local ordinances and land use plans;~~and~~ and

(iv) The applicant has financial resources to construct, maintain, operate, decommission and reclaim the facility.

1 35-12-109. Application for permit; form; fee;
2 financial accounting.

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4 (a) An application for a permit shall be filed with
5 the division, in a form as prescribed by council rules and
6 regulations, and shall contain the following information:

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8 (xiii) ~~Preliminary evaluations of or~~ An
9 evaluation of potential impacts together with any plans and
10 proposals for alleviating social, and economic ~~or~~
11 ~~environmental~~ impacts upon local ~~government~~ governments or
12 ~~any~~ special districts and alleviating environmental impacts
13 which may result from the proposed facility. ~~which~~ The
14 evaluations, plans and proposals shall cover the following:

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16 (Q) Agriculture;

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18 (R) Terrestrial and aquatic wildlife;

19

20 (S) Threatened, endangered and rare species
21 and other species of concern identified in the state
22 wildlife action plan as prepared by the Wyoming game and
23 fish department.

24

1 (xviii) A ~~brief~~ description of the methods and
2 strategies the applicant will use to maximize employment
3 and utilization of the existing local or in-state
4 contractors and labor force during the construction and
5 operation of the facility;i-

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7 (xix) Certification that the governing bodies of
8 all local governments within the potentially impacted area
9 were provided notification, a description of the proposed
10 project and an opportunity to ask the applicant questions
11 at least thirty (30) days prior to submission of the
12 application;

13
14 (xx) For facilities permitted pursuant to W.S.
15 35-12-102(a)(vii)(E), a site reclamation and
16 decommissioning plan, which shall be updated every five (5)
17 years, and a description of a financial assurance plan
18 which will assure that all facilities will be properly
19 reclaimed and decommissioned. All such plans, unless
20 otherwise exempt, shall demonstrate compliance with any
21 rules or regulations adopted by the council pursuant to
22 W.S. 35-12-105(d) and (e);

23

1 (xxi) Information demonstrating the applicant's
2 financial capability to construct, maintain, operate,
3 decommission and reclaim the facility.

4
5 (b) At the time of filing an application or a written
6 request for a waiver of the application provisions of this
7 chapter as provided in W.S. 35-12-107, or as subsequently
8 required by the director, an applicant shall pay a fee to
9 be determined by the director based upon the estimated cost
10 of investigating, reviewing, processing and serving notice
11 of an application, ~~and~~ holding a hearing in case of a
12 request for waiver, inspection and compliance activities
13 and processing application update requests. The fee shall
14 be credited to a separate account and shall be used by the
15 division as required to investigate, review, process and
16 serve notice of the application, ~~and~~ to hold a hearing in
17 case of a request for waiver and to pay the reasonable
18 costs of any meeting or hearing associated with permit
19 compliance. Unused fees shall be refunded to the
20 applicant. The maximum fee chargeable shall not exceed one-
21 half of one percent (0.5%) of the estimated construction
22 cost of the facility or one hundred thousand dollars
23 (\$100,000.00), whichever is less.

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1 (c) The director shall provide the applicant with a
2 full financial accounting, including but not limited to all
3 materials, labor and overhead costs relating to the
4 expenditures of the fee at the time of the council's
5 decision as provided in W.S. 35-12-113 or at the completion
6 of construction, whichever occurs later.

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8 (d) At any time after the fee required by subsection
9 (b) of this section has been exhausted or refunded and in
10 addition to the fee imposed under subsection (b) of this
11 section, the applicant may be required to pay a fee, as
12 determined by the director, for the costs of any meeting or
13 hearing associated with permit compliance. The director
14 shall provide the applicant with a full financial
15 accounting for the expenditure of the fee, including but
16 not limited to all materials, labor and overhead costs, at
17 the conclusion of the council meeting or hearing.

18
19 **35-12-110. Service of notice of application;**
20 **information and recommendations; application deficiencies;**
21 **procedure; jurisdiction; hearing.**

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23 (a) Not more than ten (10) days following receipt of
24 an application for a permit, the director shall:

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(i) Serve ~~notice~~ an electronic or physical copy of the application upon the governing bodies of local government which will be primarily affected by the proposed facility, ~~and the notice shall refer to~~ together with notice of the applicable provisions of W.S. 35-12-111;

(b) The division shall obtain information and recommendations from the following state agencies relative to the impact of the proposed facility as it applies to each agency's area of expertise:

(xv) Department of revenue; ~~and~~

(xvi) The Wyoming business council; ~~;~~

(xvii) Department of workforce services;

(xviii) Office of state lands and investments;

(xix) Department of employment;

(xx) Department of state parks and cultural resources;

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(xxi) Department of fire prevention and
electrical safety;

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(xxii) Department of family services.

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(e) Upon receipt of the additional information specified in subsection (d) of this section, the director shall either notify the applicant that the application is complete or notify the applicant of continued deficiencies. The applicant shall provide the required information within fifteen (15) days of receipt of the notice of continued deficiency. Upon receipt of the second deficiency notice, the applicant may:

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(i) Provide the required information within the time allotted; or

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(ii) Withdraw the application. ~~or~~

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35-12-111. Parties to permit proceeding; waiver by failure to participate.

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(a) The parties to a permit proceeding include:

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2 (ii) Each local government entitled to receive
3 ~~service of~~ a copy of the application under W.S.
4 35-12-110(a)(i);

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6 (iii) Any person residing in a local government
7 entitled to receive ~~service of~~ a copy of the application
8 under W.S. 35-12-110(a)(i) including any person holding
9 record title to lands directly affected by construction of
10 the facility and any nonprofit organization with a Wyoming
11 chapter, concerned in whole or in part to promote
12 conservation or natural beauty, to protect the environment,
13 personal health or other biological values, to preserve
14 historical sites, to promote consumer interests, to
15 represent commercial and industrial groups, or to promote
16 the orderly development of the areas in which the facility
17 is to be located. In order to be a party the person or
18 organization must file with the office a notice of intent
19 to be a party not less than twenty (20) days before the
20 date set for the hearing.

21

22 **35-12-113. Decision of council; findings necessary**
23 **for permit conditions imposed; service of decision on**
24 **parties; waste management surcharge.**

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2 (a) Within forty-five (45) days from the date of
3 completion of the hearing the council shall make complete
4 findings, issue an opinion and render a decision upon the
5 record, either granting or denying the application as
6 filed, or granting it upon terms, conditions or
7 modifications of the construction, operation or maintenance
8 of the facility as the council deems appropriate. The
9 council shall not consider the imposition of conditions
10 which address impacts within the area of jurisdiction of
11 any other regulatory agency in this state as described in
12 the information provided in W.S. 35-12-110(b), unless the
13 other regulatory agency requests that conditions be
14 imposed. The council may consider direct or cumulative
15 impacts not within the area of jurisdiction of another
16 regulatory agency in this state. The council shall grant a
17 permit either as proposed or as modified by the council if
18 it finds and determines that:

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20 (ii) The facility will not pose a threat of
21 serious injury to the environment nor to the social and
22 economic condition or inhabitants or expected inhabitants
23 in the affected area; ~~and~~

24

1 (iii) The facility will not substantially impair
2 the health, safety or welfare of the inhabitants;~~;~~ and

3
4 (iv) The applicant has financial resources to
5 construct, maintain, operate, decommission and reclaim the
6 facility.

7
8 (h) For applicants subject to W.S. 35-12-105(e), a
9 permit may be issued conditioned upon the applicant
10 furnishing a bond to the division in an amount determined
11 by the director to cover the cost of decommissioning and
12 reclaiming the facility.

13
14 **35-12-118. Penalties for violations; civil action by**
15 **attorney general.**

16
17 (a) No person shall:

18
19 (ii) Construct, operate or maintain a facility,
20 after having first obtained a permit, other than in
21 specific compliance with the permit;~~or~~

22
23 (iii) Cause any of the acts specified in this
24 subsection to occur;~~i~~

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(iv) Operate or maintain an industrial facility without having first obtained the permit required under this chapter.

35-12-119. Exemptions; information required.

(c) The construction, operation and maintenance of the following activities are exempt from this chapter:

(i) Electric transmission lines ~~not exceeding five hundred thousand (500,000)~~ with a maximum operating voltage of less than one hundred sixty thousand (160,000) volts, ⁺ except:

(A) Any collector system, regardless of voltage, associated with a commercial facility generating electricity from wind and which meets the definition of an industrial facility pursuant to W.S. 35-12-102(a)(vii)(E) shall not be exempt;

(B) A commercial facility generating electricity from wind that is exempt from W.S. 35-12-102(a)(vii)(E) shall not become subject to this

1 chapter because its collector system is greater than one
2 hundred sixty thousand (160,000) volts.

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4 **Section 2.** W.S. 35-12-110(e)(iii) is repealed.

5

6 **Section 3.** This act is effective immediately upon
7 completion of all acts necessary for a bill to become law
8 as provided by Article 4, Section 8 of the Wyoming
9 Constitution.

10

11

(END)