

SENATE FILE NO. SF0019

Impact assistance payments-maximum percentages and review.

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

A BILL

for

1 AN ACT relating to industrial development and siting;
2 specifying that the industrial siting council may increase
3 the impact assistance payments of specified projects beyond
4 the maximum allowable percentages; requiring approval of
5 increases; specifying that approvals are not subject to
6 judicial review; making conforming amendments; specifying
7 applicability; and 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),
12 (d)(intro) and by creating a new subsection (r) and
13 39-16-111(d), (e)(intro) and by creating a new subsection
14 (p) are 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 (r) and
10 39-16-111(d), ~~and~~ (e) and (p) and negotiation of agreements
11 with applicants as provided for in W.S. 35-12-107.

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 department of revenue shall thereafter pay to the county
23 treasurer and the county treasurer will distribute to the

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

1 the unmitigated impacts. The council shall state, in the
2 order issued under W.S. 35-12-113(a), the total dollar
3 amount of the impact assistance payment and include
4 specific findings of fact detailing the basis for the total
5 dollar amount determination and if requested by the
6 affected county, city or town, its justification for
7 rejecting, in whole or in part, an application for an
8 impact assistance payment. The impact assistance payment
9 shall be distributed by the department of revenue in an
10 amount and on a schedule determined by the council, based
11 on evidence presented at the hearing. Under no
12 circumstances shall the total dollar amount of the impact
13 assistance payment exceed the maximum allowable percentage
14 specified in this subsection of the total estimated
15 material costs of the facility, as those costs are
16 determined by the council. The maximum allowable percentage
17 shall be two and twenty-five hundredths percent (2.25%) for
18 facilities with total estimated materials costs of three
19 hundred fifty million dollars (\$350,000,000.00) or less
20 except as otherwise provided in this subsection, two
21 percent (2%) for facilities with total estimated materials
22 costs in excess of three hundred fifty million dollars
23 (\$350,000,000.00) but less than eight hundred fifty million

1 dollars (\$850,000,000.00) and one and one-half percent
2 (1.50%) for facilities with total estimated materials costs
3 of eight hundred fifty million dollars (\$850,000,000.00) or
4 more. For facilities with total estimated materials costs
5 of three hundred fifty million dollars (\$350,000,000.00) or
6 less, the council may increase the maximum allowable
7 percentage to not more than two and seventy-six hundredths
8 percent (2.76%) if the council includes in the specific
9 findings required under this subsection that the maximum
10 allowable percentage of two and twenty-five hundredths
11 percent (2.25%) is insufficient to mitigate the identified
12 impacts. For facilities with total estimated materials
13 costs exceeding three hundred fifty million dollars
14 (\$350,000,000.00), the council may increase the maximum
15 allowable percentage to not more than two and seventy-six
16 hundredths percent (2.76%) in accordance with subsection
17 (r) of this section. The council shall submit a report to
18 the joint appropriations committee and the joint minerals,
19 business and economic development interim committee not
20 later than ten (10) business days after increasing the
21 maximum allowable percentage as specified in this
22 subsection, including data to support the increase. The
23 impact assistance payments shall be distributed to the

1 county treasurer and the county treasurer will distribute
2 to the county and to the cities and towns therein based on
3 a ratio established by the industrial siting council during
4 a public hearing held in accordance with W.S.
5 35-12-110(f)(i). In determining the distribution ratio, the
6 industrial siting council may consider the extent and
7 location of the unmitigated impacts, the populations of the
8 affected counties, cities and towns, including any
9 disproportionate impacts on smaller communities, and any
10 other equitable factor. The industrial siting council shall
11 review the distribution ratio for construction projects on
12 a regular basis and make appropriate adjustments. A
13 governing body which is primarily affected by the facility,
14 or any person issued a permit pursuant to W.S. 35-12-106,
15 may petition the industrial siting council for review and
16 adjustment of the distribution ratio or the amount of the
17 impact assistance payment upon a showing of good cause. The
18 impact assistance payment shall be in addition to all other
19 distributions under this section, but no impact assistance
20 payment shall be made for any period in which the county or
21 counties are not imposing at least a one percent (1%) tax
22 authorized by W.S. 39-15-204(a)(i) and 39-16-204(a)(i) or
23 at least a total of a two percent (2%) sales tax authorized

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

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

3

4 (d) As used in ~~subsection~~ subsections (c) and (r) of
5 this section:

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7 (r) For industrial facilities for which the total
8 estimated materials costs exceed three hundred fifty
9 million dollars (\$350,000,000.00), the industrial siting
10 council may increase the maximum allowable percentage of
11 any impact assistance payment to not more than two and
12 seventy-six hundredths percent (2.76%) in accordance with
13 the following:

14

15 (i) The council shall include in the specific
16 findings required under subsection (c) of this section that
17 the maximum allowable percentage, as applicable, for the
18 industrial facility is insufficient to mitigate the
19 identified impacts;

20

21 (ii) Upon making the findings required in
22 paragraph (i) of this subsection, the council shall forward
23 the proposed percentage increase, the permit order or

1 decision and, if requested by the board, the record of the
2 hearing, to the state loan and investment board. The board
3 shall not accept or consider any new evidence in its
4 consideration under this paragraph. Not later than the next
5 regularly scheduled board meeting after receiving a
6 proposed percentage increase for an impact assistance
7 payment, the state loan and investment board shall consider
8 the council's proposed percentage increase and shall:

9
10 (A) Approve the proposed percentage
11 increase;

12
13 (B) Deny the proposed percentage increase;
14 or

15
16 (C) Modify the proposed percentage increase
17 to any percentage between the maximum allowable percentage
18 as specified under subsection (c) of this section and two
19 and seventy-six hundredths percent (2.76%).

20
21 (iii) The council shall authorize that payments
22 made under subsection (c) of this section be made at a
23 percentage not to exceed the applicable maximum allowable

1 percentage specified in subsection (c) of this section
2 while the proposed percentage increase is pending before
3 the state loan and investment board;

4
5 (iv) If the state loan and investment board
6 approves or modifies the proposed percentage increase under
7 paragraph (ii) of this subsection and upon direction by the
8 council, the department shall make payments in an amount
9 sufficient to make the payments equal to the amount
10 necessary to make the impact assistance payment's increased
11 percentage retroactive to the beginning of the period of
12 construction;

13
14 (v) The decision of the state loan and
15 investment board to approve, deny or modify a proposed
16 percentage increase under paragraph (ii) of this subsection
17 is final and shall not be subject to further review by the
18 industrial siting council or subject to any judicial
19 review. Nothing in this paragraph shall be construed to
20 abrogate any other right of review specified in the
21 Industrial Development Information and Siting Act.

22
23 **39-16-111. Distribution.**

1

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

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

1 specified in this subsection of the total estimated
2 material costs of the facility, as those costs are
3 determined by the council. The maximum allowable percentage
4 shall be two and twenty-five hundredths percent (2.25%) for
5 facilities with total estimated materials costs of three
6 hundred fifty million dollars (\$350,000,000.00) or less
7 except as otherwise provided in this subsection, two
8 percent (2%) for facilities with total estimated materials
9 costs in excess of three hundred fifty million dollars
10 (\$350,000,000.00) but less than eight hundred fifty million
11 dollars (\$850,000,000.00) and one and one-half percent
12 (1.50%) for facilities with total estimated materials costs
13 of eight hundred fifty million dollars (\$850,000,000.00) or
14 more. For facilities with total estimated materials costs
15 of three hundred fifty million dollars (\$350,000,000.00) or
16 less, the council may increase the maximum allowable
17 percentage to not more than two and seventy-six hundredths
18 percent (2.76%) if the council includes in the specific
19 findings required under this subsection that the maximum
20 allowable percentage of two and twenty-five hundredths
21 percent (2.25%) is insufficient to mitigate the identified
22 impacts. For facilities with total estimated materials
23 costs exceeding three hundred fifty million dollars

1 (\$350,000,000.00), the council may increase the maximum
2 allowable percentage to not more than two and seventy-six
3 hundredths percent (2.76%) in accordance with subsection
4 (p) of this section. The council shall submit a report to
5 the joint appropriations committee and the joint minerals,
6 business and economic development interim committee not
7 later than ten (10) business days after increasing the
8 maximum allowable percentage as specified in this
9 subsection, including data to support the increase. The
10 impact assistance payments shall be distributed to the
11 county treasurer and the county treasurer will distribute
12 to the county and to the cities and towns therein based on
13 a ratio established by the industrial siting council during
14 a public hearing held in accordance with W.S.
15 35-12-110(f)(i). In determining the distribution ratio, the
16 industrial siting council may consider the extent and
17 location of the unmitigated impacts, the populations of the
18 affected counties, cities and towns, including any
19 disproportionate impacts on smaller communities, and any
20 other equitable factor. The industrial siting council shall
21 review the distribution ratio for construction projects on
22 a regular basis and make appropriate adjustments. A
23 governing body which is primarily affected by the facility,

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

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

14

15 (e) As used in ~~subsection~~ subsections (d) and (p) of
16 this section:

17

18 (p) For industrial facilities for which the total
19 estimated materials costs exceed three hundred fifty
20 million dollars (\$350,000,000.00), the industrial siting
21 council may increase the maximum allowable percentage of
22 any impact assistance payment to not more than two and

1 seventy-six hundredths percent (2.76%) in accordance with
2 the following:

3
4 (i) The council shall include in the specific
5 findings required under subsection (d) of this section that
6 the maximum allowable percentage, as applicable, for the
7 industrial facility is insufficient to mitigate the
8 identified impacts;

9
10 (ii) Upon making the findings required in
11 paragraph (i) of this subsection, the council shall forward
12 the proposed percentage increase, the permit order or
13 decision and, if requested by the board, the record of the
14 hearing, to the state loan and investment board. The board
15 shall not accept or consider any new evidence in its
16 consideration under this paragraph. Not later than the next
17 regularly scheduled board meeting after receiving a
18 proposed percentage increase for an impact assistance
19 payment, the state loan and investment board shall consider
20 the council's proposed percentage increase and shall:

21
22 (A) Approve the proposed percentage
23 increase;

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(B) Deny the proposed percentage increase;

or

(C) Modify the proposed percentage increase to any percentage between the maximum allowable percentage as specified under subsection (d) of this section and two and seventy-six hundredths percent (2.76%).

(iii) The council shall authorize that payments made under subsection (d) of this section be made at a percentage not to exceed the applicable maximum allowable percentage specified in subsection (d) of this section while the proposed percentage increase is pending before the state loan and investment board;

(iv) If the state loan and investment board approves or modifies the proposed percentage increase under paragraph (ii) of this subsection and upon direction by the council, the department shall make payments in an amount sufficient to make the payments equal to the amount necessary to make the impact assistance payment's increased

1 percentage retroactive to the beginning of the period of
2 construction;

3
4 (v) The decision of the state loan and
5 investment board to approve, deny or modify a proposed
6 percentage increase under paragraph (ii) of this subsection
7 is final and shall not be subject to further review by the
8 industrial siting council or subject to any judicial
9 review. Nothing in this paragraph shall be construed to
10 abrogate any other right of review specified in the
11 Industrial Development Information and Siting Act.

12
13 **Section 2.** This act shall only apply to impact
14 assistance payments for industrial facility permit
15 applications submitted on and after the effective date of
16 this act.

17
18 **Section 3.** This act is effective July 1, 2025.

19
20 (END)