



WYOMING LEGISLATIVE SERVICE OFFICE

Research Memorandum

DEVELOPMENT IMPACT MITIGATION: A COMPARISON OF WYOMING AND OTHER STATES

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by

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Wyoming's approach to providing industrial development impact mitigation payments to local governments appears to be unique. Wyoming provides revenues to local governments to mitigate anticipated socioeconomic and environmental impacts from large industrial projects. The state utilizes an impact assistance tax payment program, whereby the Department of Revenue distributes state sales and use tax revenues in an amount determined by the Industrial Siting Council to county treasurers for dispersal to the counties, cities, or towns impacted by the projects.¹ The Legislative Service Office's (LSO) research did not reveal other states that distribute state funds to local communities to mitigate the impacts of industrial development.

Many states, however, have adopted development impact fee enabling legislation that authorizes local governments to assess fees on new residential, commercial, or industrial developments to fund capital improvements such as roads, fire and police services, or water and sewer systems needed to serve the new development.² This research memorandum provides a brief summary of Wyoming's Impact Assistance Program and reviews development impact fee enabling acts passed by five states: Arizona, Illinois, Montana, Nevada, and Washington.

WYOMING IMPACT ASSISTANCE PAYMENTS³

The Legislature created the Industrial Siting Council to provide a mechanism for reviewing the anticipated social, economic, and environmental impacts from large industrial projects.⁴ The Council operates in conjunction with the Department of Environmental Quality (DEQ) to review developers' proposals and to issue permits for facilities with an estimated construction cost of at

¹ W.S. 39-15-111(c)

² Clancy Mullen, "2019 National Impact Fee Survey" (Duncan Associates, August 18, 2019).

³ W.S. 35-12-101 through 35-12-119, Wyoming Industrial Siting Act; W.S. 39-15-111(c) and (d); W.S. 39-16-111(d) and (e).

⁴ "Council." Industrial Siting (Wyoming DEQ).

least \$96,900,000.⁵ Additionally, the Industrial Siting Act requires the Council to review and permit all commercial waste or hazardous waste incineration or disposal facilities, commercial radioactive waste management facilities, and commercial wind or solar electrical generating facilities, regardless of construction cost. The Industrial Siting Act further exempts small load electric transmission lines, oil and gas drilling facilities, and all pipelines except coal slurry pipelines from permitting requirements.

As part of the permitting process, the project developer and affected counties must provide evidence at a public hearing of the expected mitigated and unmitigated impacts the construction will have on counties, cities, and towns.⁶ The Council reviews the evidence presented, determines a dollar amount for unmitigated impacts, and issues an order for impact assistance payments, not to exceed 2.76% of the total estimated material costs of the facility. The Department of Revenue then distributes the payments from state sales and use tax revenue to the county treasurer for dispersal to affected local governments.⁷

For additional information about Wyoming’s Impact Assistance Program, please refer to the September 23, 2019, LSO memorandum, *Impact Assistance Program*.

OTHER STATE IMPACT FEE ENABLING LEGISLATION

An impact fee is typically a one-time charge local governments assess to developers to mitigate impacts on local infrastructure stemming from new development.⁸ Impact fee use originated in the 1970s with local governments in Florida and California experiencing rapid population growth, increasing needs for public services, and decreasing state and federal support for local infrastructure.⁹ In 1987, the Texas Legislature adopted the first state impact fee enabling act.¹⁰ At least 30 states have followed suit and enacted impact fee enabling legislation.¹¹

For this research memorandum, LSO reviewed development impact fee enabling acts in five states: Arizona, Illinois, Montana, Nevada, and Washington. All five states authorize local governments to impose impact fees but differ with respect to which developments are subject to impact fees, the methodologies local governments can use to assess impact fees, and the facilities and services that are eligible for funding through impact fees.

⁵ The \$96,900,000 threshold was effective May 1987. W.S. § 35-12-102(vii) specifies, “The council shall adjust this amount, up or down, each year using recognized construction cost indices as the council determines to be relevant to the actual change in construction cost.”

⁶ W.S. 39-15-111(c) and (d)

⁷ W.S. 39-15-111(c)

⁸ **“Impact Fee Handbook.” (National Association of Home Builders, 2016).**

⁹ Ibid.

¹⁰ **Clancy Mullen, “State Impact Fee Enabling Acts” (Duncan Associates, January 3, 2015).**

¹¹ **Clancy Mullen, “2019 National Impact Fee Survey” (Duncan Associates, August 18, 2019).**

"Development" Defined

The five comparator states vary in how developments subject to impact fees are defined. Illinois defines “new development” as any residential, commercial, industrial, or other project being newly constructed, reconstructed, or redeveloped that generates additional traffic within the areas of the local government.¹² Correspondingly, Arizona establishes that if development fees are assessed by a municipality or county, the fees must be imposed against all types of development – commercial, residential, and industrial.¹³

Montana provides a broad definition of "development" as the construction, renovation, or installation of a building or structure, or change in the use of land when the construction or other action creates additional demand for public facilities.¹⁴ Washington similarly defines "development activity" as any construction or expansion of a building or structure that creates additional demand and need for public facilities.¹⁵

Impact Fee Calculations

With respect to how local governments calculate impact fees, all five states require a “nexus” or connection between the fees imposed and the need for new infrastructure or public services.¹⁶ Arizona, Illinois, Montana, and Washington also include the concept of “proportionate share”; the impact fee must represent the proportionate share of improvement costs attributable to the new development.¹⁷

The five states vary in the criteria local governments must follow when calculating impact fees and payment schedules. All five states generally outline a variety of factors local governments must include when calculating impact fees, but do not specify a maximum dollar amount or any numerical measurement for the imposition of impact fees. Oftentimes, states allow local governments to calculate and determine the actual impact fee amount to be assessed on developers.

Washington requires local governments to devise a rate schedule for each type of development activity that explicitly states the fee to be imposed for each type of system improvement.¹⁸ The rate schedule must be based on a formula or calculation that contains provisions such as:

- the cost of public facilities necessitated by new development;
- the cost of existing public facilities improvements;
- availability of other public funding sources; and

¹² 605 ILCS 5/5-903

¹³ A.R.S. § 9-463.05; A.R.S. § 11-1102

¹⁴ 7-6-1601, MCA

¹⁵ Rev. Code Wash. (ARCW) § 82.02.090

¹⁶ A.R.S. § 11-1102; A.R.S. § 9-463.05; 605 ILCS 5/5-903; 7-6-1601, MCA; Nev. Rev. Stat. Ann. § 278B.050; Rev. Code Wash. (ARCW) § 82.02.050

¹⁷ A.R.S. § 11-1102; A.R.S. § 9-463.05; 605 ILCS 5/5-903; 7-6-1601, MCA; Rev. Code Wash. (ARCW) § 82.02.050

¹⁸ Rev. Code Wash. (ARCW) § 82.02.060

- the method by which public facilities improvements were financed.¹⁹

Montana’s fee calculation requirements are relatively succinct: local governments must base the amount of each impact fee on the actual cost or reasonable estimates of the cost of public facility expansion or improvements to be incurred as a result of the new development and must calculate fees in accordance with generally accepted accounting principles.²⁰

Planning Requirements

All five comparator states specify that local governments must impose impact fees according to a capital improvement plan or service area report that identifies current and future infrastructure needs. Illinois requires local governments to prepare a comprehensive road improvement plan in consultation with the road improvement impact fee advisory committee (local governments establish an advisory committee which consists of members from the public and private sectors).²¹ Additionally, local governments in Montana must prepare a service area report, which includes a written analysis detailing items such as capital improvements necessary to meet future needs for services and methodologies used to assign the proportionate share of capital costs for facility expansions.²²

Permitted Uses of Impact Fees

Generally, impact fee enabling acts permit local governments to charge impact fees to fund a wide variety of public services and facilities such as roads, water, sewer, storm water, parks, public safety (i.e., fire and police), libraries, or schools.²³ Arizona, Montana, and Nevada allow impact fees for a broad spectrum of services and facilities²⁴, while Illinois permits impact fees for road improvements only.²⁵ Washington limits the use of impact fees to roads, publicly owned parks, fire facilities, and K-12 school facilities.²⁶

¹⁹ Ibid.

²⁰ 7-6-1602, MCA

²¹ 605 ILCS 5/5-907

²² 7-6-1602, MCA

²³ **Thay N Bishop, “Development Impact Fees” (U.S. Department of Transportation, Federal Highway Administration, 2017).**

²⁴ Arizona allows cities to assess impact fees for roads, water, sewer, storm water, parks, library, and public safety facilities, and counties to assess fees for roads, water, sewer, parks, and public safety facilities (A.R.S. § 9-463.05; A.R.S. § 11-1102). Montana allows impact fees for roads, water, sewer, storm water, and public safety facilities (7-6-1601, MCA). Nevada permits impact fee for roads, water, sewer, storm water, parks, and public safety facilities (Nev. Rev. Stat. Ann. § 278B.020).

²⁵ 605 ILCS 5/5-901-919

²⁶ Rev. Code Wash. (ARCW) §82.02.090