



## WYOMING LEGISLATIVE SERVICE OFFICE

# Memorandum

**DATE** September 23, 2019

**TO** Members, Joint Appropriations Committee

**FROM** Leanne Hoag, Associate Fiscal Analyst

**SUBJECT** Impact Assistance Program

### STATUTORY AUTHORITY

The Legislature established the Impact Assistance Tax Program to provide a mechanism to address the community impacts of large construction projects. Wyoming Statutes (W.S.) 35-12-103 through 105, 39-15-111, and 39-16-111 govern the program.

W.S 35-12-103 establishes the Industrial Siting Division (Division) within the Department of Environmental Quality (DEQ). The Division evaluates and identifies company actions needed from a socio-economic and environmental standpoint in order to obtain permits to build. The companies are evaluated and potentially awarded permits by the Industrial Siting Council (Council), created by W.S 35-12-104. The Council consists of seven members who are Wyoming residents, appointed by the Governor and approved by the Senate for 6-year terms. The Council operates in conjunction with DEQ. Upon hearing companies' proposals, the Council reviews evidence of the impacts of projects and determines the dollar amount of the unmitigated impacts. They also set a payment schedule to be followed by the Department of Revenue (DOR), which distributes the payments to counties.

### HISTORY

Prior to 2015, counties received extra revenue in direct proportion to any increase in their sales and use tax collections, by comparing revenue in a base period to revenue during the period of construction, if the construction project cost was more than \$170.3 million. In 2015, the impact assistance provisions changed the method for distribution pursuant to 2015 House Bill 152 (2015 Wyoming Session Laws, Chapter 107). The bill amended W.S. 39-15-111 (c) so that the total impact assistance payment cannot exceed two and seventy-six hundredths percent (2.76%) of the total estimated material costs of the construction project as set by the Council. Of note, this percentage is equal to the state's share of the statewide sales and use tax, e.g., 4 percent tax multiplied by 69 percent. The bill also requires the Council to determine the dollar amount of unmitigated impacts along with a payment amount and time schedule for the DOR to follow. The

current statute is provided in Attachment A for reference. This statute also states that impact assistance payments will not be made for any period in which the county or counties impacted are not imposing minimum local taxes of: 1) at least a one percent tax authorized by W.S. 39-15-204(a)(i) and 39-16-204(a)(i), or 2) at least a total of two percent sales tax and a total of two percent use tax authorized by W.S. 39-15-204 (a)(i), (iii) and (vi) and 39-16-204 (a)(i), (iii) and (vi). Table 1 depicts the Impact Assistance Program payments for the last five fiscal years. Per DOR, the total payments under the Impact Assistance Program for fiscal year 2019 total to \$10,852,986.79, or more than the last five fiscal years combined.

**Table 1: Historical Impact Assistance Program Payments, Fiscal Year 2014-2018.**

| Fiscal Year | Entity             | Sales Tax          | Use Tax          | Total              |
|-------------|--------------------|--------------------|------------------|--------------------|
| 2014        | Laramie County     | \$5,100,355        | \$172,581        | \$5,272,937        |
|             | <b>Total</b>       | <b>\$5,100,355</b> | <b>\$172,581</b> | <b>\$5,272,937</b> |
| 2015        | Sweetwater County  | \$823,268          | \$153,305        | \$976,573          |
|             | <b>Total</b>       | <b>\$823,268</b>   | <b>\$153,305</b> | <b>\$976,573</b>   |
| 2016        | Sweetwater County  | \$ -               | \$99,132         | \$99,132           |
|             | Rock Springs       | \$ -               | \$99,132         | \$99,132           |
|             | Green River        | \$ -               | \$49,566         | \$49,566           |
|             | Converse County    | \$ -               | \$259,456        | \$259,456          |
|             | Natrona County     | \$ -               | \$127,792        | \$127,792          |
|             | <b>Total</b>       | <b>\$ -</b>        | <b>\$635,077</b> | <b>\$635,077</b>   |
| 2017        | Carbon County      | \$31,387           | \$246            | \$31,633           |
|             | Albany County      | \$1,002            | \$7              | \$1,009            |
|             | Sweetwater County  | \$1,002            | \$7              | \$1,009            |
|             | <b>Total</b>       | <b>\$33,390</b>    | <b>\$259</b>     | <b>\$33,650</b>    |
| 2018        | Carbon County      | \$238,449          | \$1,202          | \$239,651          |
|             | Albany County      | \$7,614            | \$38             | \$7,652            |
|             | Sweetwater County  | \$7,610            | \$38             | \$7,648            |
|             | <b>Total</b>       | <b>\$253,674</b>   | <b>\$1,278</b>   | <b>\$254,952</b>   |
|             | <b>Grand Total</b> | <b>\$6,210,688</b> | <b>\$962,501</b> | <b>\$7,173,188</b> |

Source: LSO Analysis of Department of Revenue Annual Report.

## CURRENT PROJECTS

The current projects that are in the program and the Council approved payments by county are displayed in Table 2. It is important to note that the Boswell Springs Wind Project in Carbon county and Albany county, which was in the process of construction, has been put on hold. The project is not currently receiving impact assistance payments and there is currently not an intended date for recommencement of the project. It is also important to note that the Chokecherry and Sierra Madre Wind Energy project's distribution is calculated under old statute (prior to 2015). Specifically, the payment schedule is calculated using the base period amount of sales compared to collections during construction, consistent with the structure prior to 2015.

**Table 2: Current Impact Assistance Program Project Payments, by County.**

| Project   | County     | Percentage Split | Council Approved Total                              |
|---|------------|------------------|---|
| <b>Chokecherry and Sierra Madre Wind Energy</b> | Carbon     | 94%              | <i>Calculated based on pre-2015 statute change.</i> |
|   | Albany     | 3%               |   |
|   | Sweetwater | 3%               |   |
| <b>TB Flats Wind Energy</b>                     | Carbon     | 72%              | <b>\$9,353,413</b>                                  |
|   | Albany     | 28%              |   |
| <b>Ekola Flats Wind Energy</b>                  | Carbon     | 84%              | <b>\$4,851,031</b>                                  |
|   | Albany     | 16%              |   |
| <b>Gateway West Transmission Line</b>           | Carbon     | 48%              | <b>\$7,815,171</b>                                  |
|   | Sweetwater | 49%              |   |
|   | Albany     | 3%               |   |

Source: LSO analysis of information provided by DOR and DEQ.

There are other projects in the queue awaiting Council approval in order to trigger payments for affected local governments. Table 3 identifies the projects that have been approved by the Council but have yet to start construction. Once construction begins, the DOR will be making the payments in the schedule outlined by the Council. Table 3 also shows the maximum amount that each project could receive, the amount requested, and the Council approved payment amount.

**Table 3: Industrial Siting Council Approved Projects and Impact Assistance Program Payment Amounts.**

| Project                            | County            | Maximum Payment | Requested Payment | Approved Payment   |
|------------------------------------|-------------------|-----------------|-------------------|--------------------|
| <b>Uinta Wind Energy</b>           | Unita             | \$2,809,680     | \$384,543         | <b>\$384,543</b>   |
| <b>TransWest Transmission Line</b> | Carbon/Sweetwater | \$24,613,680    | \$8,443,095       | <b>\$8,443,095</b> |
| <b>Cedar Springs Wind Energy</b>   | Converse/ Natrona | \$10,891,236    | \$10,891,236      | <b>\$8,168,427</b> |
| <b>Roundhouse Wind Energy</b>      | Laramie           | \$7,914,300     | \$7,152,930       | <b>\$5,902,930</b> |

Source: LSO analysis of information provided by DEQ.

Finally, some projects are being evaluated for qualification to trigger impact assistance payments for affected local governments. These projects are in early stages and have yet to either come before or receive final action from the Council on their approved payment and schedule. The projects in this category are as follows:

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- Cedar Spring III Wind Energy project in Converse and Natrona counties;
- Two Rivers/ Lucky Star Wind Energy in Albany and Carbon counties;
- PCW Generation in Albany and Carbon counties;
- Rail Tie Wind Energy in Albany and Carbon counties,
- Denbury Gas Plant in Sublette county; and
- Gateway South Transmission in Carbon and Sweetwater counties.

Please contact me with any questions.

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