

**DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION**

HOUSE BILL NO.

Local impact assistance payments.

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

A BILL

for

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

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

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STAFF COMMENT

12 This version of the bill draft incorporates the two
13 amendments that were presented to the Committee at the
14 August meeting and includes changes suggested by
15 Representatives Larsen and Heiner.

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

7
 8 **39-15-111. Distribution.**

9
 10 (c) If any person commences after the effective date
 11 of this act to construct an industrial facility, as that
 12 term is defined in W.S. 35-12-102, under a permit issued
 13 pursuant to W.S. 35-12-106, or if the federal or state
 14 government commences to construct any project within this
 15 state with an estimated construction cost as specified in
 16 the definition of industrial facility in W.S. 35-12-102 the
 17 department of revenue shall thereafter pay to the county
 18 treasurer and the county treasurer will distribute to the
 19 county, cities and towns of that county in which the
 20 industrial facility or project is located, impact
 21 assistance payments from the monies available under
 22 paragraph (b)(i) of this section. Each payment to the
 23 county treasurer shall be equal to an amount determined by
 24 the industrial siting council under this subsection and

1 shall continue during the period of construction except
2 that in the case of an industrial facility or a federal or
3 state government project which is expected to continue in
4 phases for an indefinite period of time, the department of
5 revenue shall discontinue payments under this section when
6 construction of any phase has ceased or been substantially
7 completed for twelve (12) consecutive months. The person
8 constructing the industrial facility and the counties
9 affected by the construction of the industrial facility
10 shall provide evidence at the public hearing held pursuant
11 to W.S. 35-12-110(f)(i) of the mitigated and unmitigated
12 impacts that the construction will have on the counties,
13 cities and towns determined by the industrial siting
14 council to be affected by the construction of the
15 industrial facility. The industrial siting council shall
16 review the evidence of the impacts and determine, applying
17 a preponderance of evidence standard, the dollar amount of
18 the unmitigated impacts. The council shall state, in the
19 order issued under W.S. 35-12-113(a), the total dollar
20 amount of the impact assistance payment and ~~the reasons for~~
21 ~~determining that~~ include specific findings of fact
22 detailing the basis for the total dollar amount
23 determination. The impact assistance payment shall be

1 distributed by the department of revenue in an amount and
2 on a schedule determined by the council, based on evidence
3 presented at the hearing. Under no circumstances shall the
4 total dollar amount of the impact assistance payment exceed
5 ~~two and seventy-six hundredths percent (2.76%)~~ the maximum
6 allowable percentage specified in this subsection of the
7 total estimated material costs of the facility, as those
8 costs are determined by the council. The maximum allowable
9 percentage shall be two and twenty-five hundredths percent
10 (2.25%) for facilities with total estimated materials costs
11 of three hundred fifty million dollars (\$350,000,000.00) or
12 less except as otherwise provided in this subsection, two
13 percent (2.00%) for facilities with total estimated
14 materials costs in excess of three hundred fifty million
15 dollars (\$350,000,000.00) but less than eight hundred fifty
16 million dollars (\$850,000,000.00) and one and one-half
17 percent (1.50%) for facilities with total estimated
18 materials costs of eight hundred fifty million dollars
19 (\$850,000,000.00) or more. For facilities with total
20 estimated materials costs of three hundred fifty million
21 dollars (\$350,000,000.00) or less, the council may increase
22 the maximum allowable percentage to not more than two and
23 fifty-five hundredths percent (2.55%) if the council

1 includes in the specific findings required under this
2 subsection that the maximum allowable percentage of two and
3 twenty-five hundredths percent (2.25%) is insufficient to
4 mitigate the identified impacts. The council shall submit a
5 report to the joint appropriations committee and the joint
6 minerals, business and economic development interim
7 committee not later than ten (10) business days after
8 increasing the maximum allowable percentage as specified in
9 this subsection, including data to support the increase.

10 The 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. 35-12-
15 110(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. The
5 impact assistance payment shall be in addition to all other
6 distributions under this section, but no impact assistance
7 payment shall be made for any period in which the county or
8 counties are not imposing at least a one percent (1%) tax
9 authorized by W.S. 39-15-204(a)(i) and 39-16-204(a)(i) or
10 at least a total of a two percent (2%) sales tax authorized
11 under W.S. 39-15-204(a)(i), (iii) and (vi) and at least a
12 total of a two percent (2%) use tax authorized under W.S.
13 39-16-204(a)(i), (ii) and (v). For purposes of this
14 subsection, the industrial facility or federal or state
15 government project will be deemed to be located in the
16 county in which a majority of the construction costs will
17 be expended, provided that upon a request from the county
18 commissioners of any adjoining county to the industrial
19 siting council, the council may determine that the social
20 and economic impacts from construction of the industrial
21 facility or federal or state government project upon the
22 adjoining county are significant and establish the ratio of
23 impacts between the counties and certify that ratio to the

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

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 16 STAFF COMMENT

17
 18 The Wyoming County Commissioners Association proposed the
 19 following amendment at the August meeting:

20
 21 Page 3-line 23 After "determination" insert ",
 22 including its justification for
 23 rejecting, in whole or in part, any
 24 application".

25
 26 Should the Committee wish to adopt the amendment, the
 27 Committee may wish to consider inserting "for an impact
 28 assistance payment" after "application".

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

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3 (iii) "Unmitigated impact" means an expense:

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

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

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

20

21 (D) Excluding expenses for which a county,
22 city or town previously received an impact assistance

1 payment unless the county, city or town can demonstrate the
2 expenses are new or ongoing.

3

4 **39-16-111. Distribution.**

5

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

1 phases for an indefinite period of time, the department of
2 revenue shall discontinue payments under this section when
3 construction of any phase has ceased or been substantially
4 completed for twelve (12) consecutive months. The person
5 constructing the industrial facility and the counties
6 affected by the construction of the industrial facility
7 shall provide evidence at the public hearing held pursuant
8 to W.S. 35-12-110(f)(i) of the mitigated and unmitigated
9 impacts that the construction will have on the counties,
10 cities and towns determined by the industrial siting
11 council to be affected by the construction of the
12 industrial facility. The industrial siting council shall
13 review the evidence of the impacts and determine, applying
14 a preponderance of evidence standard, the dollar amount of
15 the unmitigated impacts. The council shall state, in the
16 order issued under W.S. 35-12-113(a), the total dollar
17 amount of the impact assistance payment and ~~the reasons for~~
18 ~~determining that~~ include specific findings of fact
19 detailing the basis for the total dollar amount
20 determination. The impact assistance payment shall be
21 distributed by the department of revenue in an amount and
22 on a schedule determined by the council, based on evidence
23 presented at the hearing. Under no circumstances shall the

1 total dollar amount of the impact assistance payment exceed
2 ~~two and seventy six hundredths percent (2.76%)~~ the maximum
3 allowable percentage specified in this subsection of the
4 total estimated material costs of the facility, as those
5 costs are determined by the council. The maximum allowable
6 percentage shall be two and twenty-five hundredths percent
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8 of three hundred fifty million dollars (\$350,000,000.00) or
9 less except as otherwise provided in this subsection, two
10 percent (2.00%) for facilities with total estimated
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13 million dollars (\$850,000,000.00) and one and one-half
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20 fifty-five hundredths percent (2.55%) if the council
21 includes in the specific findings required under this
22 subsection that the maximum allowable percentage of two and
23 twenty-five hundredths percent (2.25%) is insufficient to

1 mitigate the identified impacts. The council shall submit a
2 report to the joint appropriations committee and the joint
3 minerals, business and economic development interim
4 committee not later than ten (10) business days after
5 increasing the maximum allowable percentage as specified in
6 this subsection, including data to support the increase.

7 The impact assistance payments shall be distributed to the
8 county treasurer and the county treasurer will distribute
9 to the county and to the cities and towns therein based on
10 a ratio established by the industrial siting council during
11 a public hearing held in accordance with W.S. 35-12-
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13 industrial siting council may consider the extent and
14 location of the unmitigated impacts, the populations of the
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23 adjustment of the distribution ratio or the amount of the

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

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

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 14 STAFF COMMENT

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17 following amendment at the August meeting:

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19 Page 10-line 20 After "determination" insert ",
 20 including its justification for
 21 rejecting, in whole or in part, any
 22 application".

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24 Should the Committee wish to adopt the amendment, the
 25 Committee may wish to consider inserting "for an impact
 26 assistance payment" after "application".

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

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