

**DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION**

HOUSE BILL NO.

Industrial siting-impact assistance payments.

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

A BILL

for

1 AN ACT relating to industrial development and siting;
2 requiring industrial siting permit applicants to pay impact
3 assistance payments as specified; specifying requirements
4 for negotiations and payments; specifying duties for
5 impacted local governments and the industrial siting
6 council; providing definitions; making conforming
7 amendments; repealing obsolete provisions; specifying
8 applicability; requiring rulemaking; and providing for
9 effective dates.

10

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

12

1 Section 1. W.S. 35-12-120 is created to read:

2

3 35-12-120. Impact assistance payments; negotiations;
4 requirements.

5

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STAFF COMMENT

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10 Under current law, if the state or the federal government
11 constructs an industrial project, sales-tax funds are
12 available to impacted local governments for impact
13 assistance payments (even though the governments are exempt
14 from the application and permit requirements under the
15 Industrial Development Information and Siting Act). As
16 drafted, governmental entities constructing projects would
17 not be required to make impact-assistance payments. Please
18 let me know how you would like to proceed with this.

19

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22

23 (a) On and after July 1, 2025, if any applicant
24 receives from the director or the administrator a finding
25 of jurisdiction for which a permit is required under this
26 act, that person shall pay an impact assistance payment to
27 any local government within an impacted area in accordance
28 with all of the following:

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STAFF COMMENT

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The language below addresses the negotiation requirements. Per the working group, the deadlines are set to require completion or cessation before the applicant submits the permit application to the Industrial Siting Division.

(i) Not later than sixty (60) days before the submission of an application under W.S. 35-12-107 or 35-12-109, the applicant shall commence negotiations with each local government located within an impacted area. Negotiations may take place with all impacted local governments collectively, individually or both. Negotiations shall be undertaken to reach agreements on the amount of the impact assistance payment and the payment schedule. The applicant and each local government participating in negotiations under this paragraph shall participate and negotiate in good faith;

21

(ii) Upon commencement of negotiations under this subsection, each impacted local government shall negotiate:

24

(A) With the applicant in accordance with paragraph (i) of this subsection;

27

1 (B) With every other impacted local
2 government to reach agreement on the distribution ratio of
3 the impact assistance payment to each impacted local
4 government and the schedule of payments to each impacted
5 local government.

6

7 (iii) Not later than the date on which the
8 applicant submits an application under W.S. 35-12-107 or
9 35-12-109, the applicant and each impacted local government
10 shall report in writing to the council on:

11

12 (A) The agreed-upon terms for:

13

14 (I) The amount of the impact assistance
15 payment, if any, that the applicant will pay to the
16 impacted local governments;

17

18 (II) The schedule for disbursing and
19 distributing the impact assistance payment.

20

21 (B) If no agreement is reached for any or
22 all of the matters specified in subparagraph (A) of this
23 paragraph, the failure to reach an agreement and the

1 efforts and results of negotiations in attempting to agree
2 upon the matters specified in subparagraph (A) of this
3 paragraph. As part of the report required under this
4 subparagraph, the applicant and each impacted local
5 government shall report in writing and provide evidence to
6 the council on:

7

8 (I) The proposed total dollar amount of
9 the impact assistance payment and evidence showing the
10 specific unmitigated impacts that will be addressed or
11 mitigated by the impact assistance payment;

12

13 (II) The proposed payment schedule of
14 any impact assistance payment and evidence supporting the
15 proposed payment schedule;

16

17 (III) Any other information that would
18 aid the council in reaching a determination on the matters
19 specified in this subparagraph.

20

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22 *****

STAFF COMMENT

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1 Per the working group's direction, the Council has three
 2 options when it comes to approving impact assistance
 3 payments: (1) accept the agreed-upon terms for the payment
 4 that resulted from negotiation; (2) if negotiations were
 5 unsuccessful, consider evidence and order a payment along
 6 with the terms and conditions for the payment; or (3)
 7 reject the agreed-upon terms from the negotiation if the
 8 Council finds that the agreement is insufficient to
 9 adequately address the unmitigated impacts that the local
 10 government will experience from the industrial facility.

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 13 *****
 14

15 (b) At the hearing specified under W.S. 35-12-
 16 107(d)(i) or W.S. 35-12-110(f)(i) and subject to subsection
 17 (c) of this section, the council:

18
 19 (i) Shall accept the agreed-upon terms specified
 20 in subparagraph (a)(iii)(A) of this section and incorporate
 21 the terms, if necessary, into the council's order under
 22 W.S. 35-12-113(a);

23
 24 (ii) May reject the agreed-upon terms specified
 25 in subparagraph (a)(iii)(A) of this section, in whole or in
 26 part, if the council makes specific findings that the
 27 agreed-upon terms are insufficient for the local government
 28 to adequately address the unmitigated impacts identified by
 29 the local government; or

1

2 (iii) If no agreement is reached, in whole or in
3 part, and a report is received under subparagraph
4 (a)(iii)(B) of this section, shall determine the following
5 applying a preponderance of the evidence standard:

6

7 (A) The total dollar amount of the
8 unmitigated impacts of the industrial facility;

9

10 (B) The total dollar amount of the impact
11 assistance payment, including specific findings of fact
12 detailing the basis for the total dollar amount
13 determination;

14

15 (C) If requested by an affected county, city
16 or town, the council's justification for rejecting, in
17 whole or in part, a county's, city's or town's requested
18 impact assistance payment;

19

20 (D) The schedule of the impact assistance
21 payments.

22

1 (c) Impact assistance payments made and required under
2 this section shall be made by the applicant in accordance
3 with the council's order for the impact assistance payment
4 included within the order issued under W.S. 35-12-113(a).

5

6 (d) In awarding or approving an impact assistance
7 payment under this section, the council shall, in the order
8 or decision approving a permit, include the terms specified
9 in this section and any other conditions or requirements
10 for the impact assistance payment that the council deems
11 necessary.

12

13 (e) The applicant shall make all impact assistance
14 payments to the impacted local governments as required in
15 the council's decision or order. The applicant shall make
16 the payment to the county treasurer, who shall distribute
17 the payment to the county, cities and towns of that county
18 in which the industrial facility is located under the
19 schedule, distribution ratio and other terms specified by
20 the council.

21

22 (f) An impacted local government or the applicant may
23 petition the council for review and adjustment of the

1 distribution ratio or the amount of the impact assistance
2 payment upon a showing of good cause.

3

4 (g) Each local government receiving an impact
5 assistance payment under this section shall keep records of
6 all impact assistance payments received and all
7 expenditures made with funds received from the impact
8 assistance payment. Each local government shall, upon
9 request, provide to the council, the director or the
10 administrator any or all records kept by the local
11 government under this subsection.

12

13 (h) Each local government required to enter
14 negotiations under this section may request technical
15 assistance from the director, the administrator and the
16 staff of the division in accordance with W.S. 35-12-105(c).
17 The technical assistance requested under this subsection
18 may, at the request of the local government, include a full
19 review of any proposed terms for an agreement for an impact
20 assistance payment under this section.

21

22 **Section 2.** W.S. 35-12-102(a)(iii)(intro) and by
23 creating new paragraphs (xvi) and (xvii), 35-12-105(c), 35-

1 12-106(e), 35-12-107(b) by creating a new paragraph (xvi),
2 (f) and (h)(ii), 35-12-109(a) by creating a new paragraph
3 (xxiii), 35-12-113(a)(intro), 39-15-111(b)(i) and 39-16-
4 111(b)(i) are amended to read:

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7 *****
8 STAFF COMMENT
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10 Most of the changes below are conforming to incorporate the
11 impact assistance payments into the chapter concerning
12 industrial siting. The definitions added below are taken
13 directly from the current impact-assistance statutes in
14 Title 39 and are unchanged.

15

16 *****
17 *****
18

19 35-12-102. Definitions.

20

21 (a) As used in this chapter:

22

23 (iii) "Commence to construct" or "commencement
24 of construction" means:

25

26 (xvi) "Period of construction," except as
27 otherwise specified in this paragraph, begins at the
28 commencement of construction and ends when the physical
29 components of the industrial facility or federal or state

1 government project are ninety percent (90%) complete. For
 2 purposes of this paragraph, if payments are already being
 3 made under this act, commencement of construction of
 4 another industrial facility shall not be considered for
 5 purposes of establishing a new impact assistance payment
 6 amount or determining when payments shall commence under
 7 this act, but will only be considered for determining when
 8 the period of construction ends;

9

10 (xvii) "Unmitigated impact" means an expense:

11

12 (A) Incurred by a county, city or town
 13 directly or indirectly attributable to the construction of
 14 an industrial facility;

15

16 (B) That is not otherwise mitigated by any
 17 other entity;

18

19 (C) For medical services, fire and law
 20 enforcement services, roads and public utilities;

21

22 (D) That shall be supported by an analysis
 23 prepared by the county, city or town of the current excess

1 capacity in each of the services specified in subparagraph
 2 (C) of this paragraph. Expenses in these services may
 3 include the employment of additional employees or officers
 4 only if the county, city or town has determined overtime
 5 compensation or contract labor would not be appropriate;
 6 and

7

8 (E) That shall not include expenses for
 9 which a county, city or town previously received an impact
 10 assistance payment unless the county, city or town can
 11 demonstrate the expenses are new or ongoing.

12

13 **35-12-105. Appointment and duties of administrator;**
 14 **staff; rules and regulations.**

15

16 (c) The director, administrator and the staff of the
 17 division are authorized to the extent possible, at the
 18 request of local governments, to provide technical
 19 assistance to local governments in the preparation of
 20 anticipated impacts related to a proposed project
 21 consistent with W.S. ~~39-15-111(c) and (d) and 39-16-111(d)~~
 22 ~~and (e)~~ 35-12-120 and negotiation of agreements with
 23 applicants as provided for in W.S. 35-12-107.

1

2 **35-12-106. Permit from council required before**
3 **commencing construction of facility; electronic permitting;**
4 **amendments; exceptions; federal requirements.**

5

6 (e) The council may waive the application and permit
7 provisions of this chapter if the applicant establishes by
8 clear and convincing proof that an emergency exists created
9 by the loss or damage to an existing facility which
10 seriously threatens the health, safety and welfare of the
11 public. Any person for whom the application and permit
12 provisions of this chapter are waived under this subsection
13 shall still comply with the requirements of W.S. 35-12-120
14 under a schedule established by the council.

15

16 **35-12-107. Request for waiver of permit application;**
17 **form.**

18

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

22

1 (xvi) The date on which negotiations required
2 under W.S. 35-12-120(a) commenced or will commence.

3
4 (f) Within fourteen (14) days of the public meeting,
5 the applicant shall meet with the director and each local
6 government affected by the proposed facility to determine
7 the mitigation required to minimize any adverse impacts
8 resulting from the proposed facility and to update the
9 director on the negotiations required under W.S. 35-12-
10 120(a).

11
12 (h) The applicant shall present any evidence
13 necessary to demonstrate to the council:

14
15 (ii) That the applicant has reached agreement
16 with local governments affected by the facility under W.S.
17 35-12-120 on the mitigation required to alleviate adverse
18 effects resulting from the facility; and

19
20 **35-12-109. Application for permit; form; fee;**
21 **financial accounting.**

22

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

4

5 (xxiii) The date on which negotiations required
6 under W.S. 35-12-120(a) commenced or will commence.

7

8 **35-12-113. Decision of council; findings necessary**
9 **for permit conditions imposed; service of decision on**
10 **parties; waste management surcharge.**

11

12 (a) Within forty-five (45) days from the date of
13 completion of the hearing the council shall make complete
14 findings, issue an opinion and render a decision upon the
15 record, either granting or denying the application as
16 filed, or granting it upon terms, conditions or
17 modifications of the construction, operation or maintenance
18 of the facility as the council deems appropriate. The
19 council shall include any terms or requirements specified
20 or required under W.S. 35-12-120. The council shall not
21 consider the imposition of conditions which address impacts
22 within the area of jurisdiction of any other regulatory
23 agency in this state as described in the information

1 provided in W.S. 35-12-110(b), unless the other regulatory
2 agency requests that conditions be imposed. In considering
3 the imposition of conditions requested by other agencies
4 upon private lands, the council shall consider in the same
5 manner and to the same extent any comments presented by an
6 affected landowner. The council may consider direct or
7 cumulative impacts not within the area of jurisdiction of
8 another regulatory agency in this state. The council shall
9 grant a permit either as proposed or as modified by the
10 council if it finds and determines that:

11

12 **39-15-111. Distribution.**

13

14 (b) Revenues earned under W.S. 39-15-104 during each
15 fiscal year shall be recognized as revenue during that
16 fiscal year for accounting purposes. Except as otherwise
17 provided in subsection (p) of this section, for all revenue
18 collected by the department under W.S. 39-15-104 the
19 department shall:

20

21 (i) Credit sixty-nine percent (69%) to the state
22 general fund for deposit by the state treasurer, ~~except as~~

1 ~~provided by subsections (c) and (d) of this section and~~
2 less any credit allowed pursuant to W.S. 39-15-107(b)(xi);

3

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

5

6 (b) Revenues earned under this article during each
7 fiscal year shall be recognized as revenue during that
8 fiscal year for accounting purposes. Revenue collected by
9 the department from the taxes imposed by this article shall
10 be transferred to the state treasurer who shall, as
11 specified by the department:

12

13 (i) Credit sixty-nine percent (69%) for deposit
14 by the state treasurer to the general fund, ~~except as~~
15 ~~provided by subsections (d) and (e) of this section and~~
16 less any credit allowed pursuant to W.S. 39-16-
17 107(b)(viii);

18

19 **Section 3.** W.S. 39-15-111(c) and (d) and 39-16-111(d)
20 and (e) are repealed.

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22 *****

23 *****

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STAFF COMMENT

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2 W.S. 39-15-111(c) and (d) and 39-16-111(d) and (e) are the
3 sales-tax and use-tax provisions concerning impact
4 assistance payments. Given the change to the applicants
5 paying the impact assistance payment, most of the language
6 here is obsolete or has otherwise been incorporated in this
7 bill draft.

8
9 Because of the length of these subsections, they are
10 omitted from the text of this draft for brevity.

11
12 *****
13 *****
14

15 Section 4. This act shall apply to all industrial
16 facilities as defined in W.S. 35-12-102(a)(vii) for which
17 the applicant receives a determination of jurisdiction from
18 the director of the department of environmental quality or
19 the administrator of the industrial siting division of the
20 department of environmental quality on and after July 1,
21 2025. For all industrial facilities for which a
22 determination of jurisdiction was provided to the applicant
23 before July 1, 2025, the laws governing impact assistance
24 payments before July 1, 2025 shall apply to those
25 facilities.

26
27 *****
28 *****
29 STAFF COMMENT
30

31 The dividing line between the old and new processes for
32 impact-assistance payments is whether a project has

1 received a determination of jurisdiction from the
2 Department of Environmental Quality on or after July 1,
3 2025.

4
5 *****
6 *****
7

8 **Section 5.** The industrial siting council shall
9 promulgate all rules necessary to implement this act.

10
11 **Section 6.**

12
13 (a) Except as provided in subsection (b) of this
14 section, this act is effective July 1, 2025.

15
16 (b) Sections 5 and 6 of this act are effective
17 immediately upon completion of all acts necessary for a
18 bill to become law as provided by Article 4, Section 8 of
19 the Wyoming Constitution.

20
21 (END)