

**DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION**

HOUSE BILL NO.

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), (d)(intro)
12 and by creating a new subsection (r) and 39-16-111(d),

1 (e)(intro) and by creating a new subsection (p) are amended
2 to read:

3

4 **35-12-105. Appointment and duties of administrator;**
5 **staff; rules and regulations.**

6

7 (c) The director, administrator and the staff of the
8 division are authorized to the extent possible, at the
9 request of local governments, to provide technical
10 assistance to local governments in the preparation of
11 anticipated impacts related to a proposed project
12 consistent with W.S. 39-15-111(c), ~~and~~(d) and (r) and 39-
13 16-111(d), ~~and~~(e) and (p) and negotiation of agreements
14 with applicants as provided for in W.S. 35-12-107.

15

16 **39-15-111. Distribution.**

17

18 (c) If any person commences after the effective date
19 of this act to construct an industrial facility, as that
20 term is defined in W.S. 35-12-102, under a permit issued
21 pursuant to W.S. 35-12-106, or if the federal or state
22 government commences to construct any project within this
23 state with an estimated construction cost as specified in

1 the definition of industrial facility in W.S. 35-12-102 the
2 department of revenue shall thereafter pay to the county
3 treasurer and the county treasurer will distribute to the
4 county, cities and towns of that county in which the
5 industrial facility or project is located, impact
6 assistance payments from the monies available under
7 paragraph (b)(i) of this section. Each payment to the
8 county treasurer shall be equal to an amount determined by
9 the industrial siting council under this subsection and
10 shall continue during the period of construction except
11 that in the case of an industrial facility or a federal or
12 state government project which is expected to continue in
13 phases for an indefinite period of time, the department of
14 revenue shall discontinue payments under this section when
15 construction of any phase has ceased or been substantially
16 completed for twelve (12) consecutive months. The person
17 constructing the industrial facility and the counties
18 affected by the construction of the industrial facility
19 shall provide evidence at the public hearing held pursuant
20 to W.S. 35-12-110(f)(i) of the mitigated and unmitigated
21 impacts that the construction will have on the counties,
22 cities and towns determined by the industrial siting
23 council to be affected by the construction of the

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

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

1 maximum allowable percentage as specified in this
2 subsection, including data to support the increase. The
3 impact assistance payments shall be distributed to the
4 county treasurer and the county treasurer will distribute
5 to the county and to the cities and towns therein based on
6 a ratio established by the industrial siting council during
7 a public hearing held in accordance with W.S. 35-12-
8 110(f)(i). In determining the distribution ratio, the
9 industrial siting council may consider the extent and
10 location of the unmitigated impacts, the populations of the
11 affected counties, cities and towns, including any
12 disproportionate impacts on smaller communities, and any
13 other equitable factor. The industrial siting council shall
14 review the distribution ratio for construction projects on
15 a regular basis and make appropriate adjustments. A
16 governing body which is primarily affected by the facility,
17 or any person issued a permit pursuant to W.S. 35-12-106,
18 may petition the industrial siting council for review and
19 adjustment of the distribution ratio or the amount of the
20 impact assistance payment upon a showing of good cause. The
21 impact assistance payment shall be in addition to all other
22 distributions under this section, but no impact assistance
23 payment shall be made for any period in which the county or

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

1 impact assistance payment is approved and annually each
2 year thereafter for the duration in which distributions are
3 made and until all distributions are expended. The
4 industrial siting council shall adopt rules as necessary to
5 implement this subsection.

6

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

9

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

17

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

23

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

12

13 (A) Approve the proposed percentage
14 increase;

15

16 (B) Deny the proposed percentage increase;

17 or

18

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

23

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

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

16
17 (v) The decision of the state loan and investment
18 board to approve, deny or modify a proposed percentage
19 increase under paragraph (ii) of this subsection is final
20 and shall not be subject to further review by the
21 industrial siting council or subject to any judicial
22 review. Nothing in this paragraph shall be construed to

1 abrogate any other right of review specified in the
2 Industrial Development Information and Siting Act.

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 include
18 specific findings of fact detailing the basis for the total
19 dollar amount determination and if requested by the
20 affected county, city or town, its justification for
21 rejecting, in whole or in part, an application for an
22 impact assistance payment. The impact assistance payment
23 shall be distributed by the department of revenue in an

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

1 allowable percentage of two and twenty-five hundredths
2 percent (2.25%) is insufficient to mitigate the identified
3 impacts. For facilities with total estimated materials
4 costs exceeding three hundred fifty million dollars
5 (\$350,000,000.00), the council may increase the maximum
6 allowable percentage to not more than two and seventy-six
7 hundredths percent (2.76%) in accordance with subsection
8 (p) of this section. The council shall submit a report to
9 the joint appropriations committee and the joint minerals,
10 business and economic development interim committee not
11 later than ten (10) business days after increasing the
12 maximum allowable percentage as specified in this
13 subsection, including data to support the increase. The
14 impact assistance payments shall be distributed to the
15 county treasurer and the county treasurer will distribute
16 to the county and to the cities and towns therein based on
17 a ratio established by the industrial siting council during
18 a public hearing held in accordance with W.S. 35-12-
19 110(f)(i). In determining the distribution ratio, the
20 industrial siting council may consider the extent and
21 location of the unmitigated impacts, the populations of the
22 affected counties, cities and towns, including any
23 disproportionate impacts on smaller communities, and any

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

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

18

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

21

22 (p) For industrial facilities for which the total
23 estimated materials cost exceeds three hundred fifty

1 million dollars (\$350,000,000.00), the industrial siting
2 council may increase the maximum allowable percentage of
3 any impact assistance payment to not more than two and
4 seventy-six hundredths percent (2.76%) in accordance with
5 the following:

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

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

1

2

(A) Approve the proposed percentage

3

increase;

4

5

(B) Deny the proposed percentage increase;

6

or

7

8

(C) Modify the proposed percentage increase

9

to any percentage between the maximum allowable percentage

10

as specified under subsection (d) of this section and two

11

and seventy-six hundredths percent (2.76%).

12

13

(iii) The council shall authorize that payments

14

made under subsection (d) of this section be made at a

15

percentage not to exceed the applicable maximum allowable

16

percentage specified in subsection (d) of this section

17

while the proposed percentage increase is pending before

18

the state loan and investment board;

19

20

(iv) If the state loan and investment board

21

approves or modifies the proposed percentage increase under

22

paragraph (ii) of this subsection and upon direction by the

23

council, the department shall make payments in an amount

1 sufficient to make the payments equal to the amount
2 necessary to make the impact assistance payment's increased
3 percentage retroactive to the beginning of the period of
4 construction;

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

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

19
20 **Section 3.** This act is effective July 1, 2025.

21
22 (END)