

Industrial Development Information and Siting Act

Problem Statement:

Concerns have been raised that Industrial Siting impact assistance payments don't come early enough in the process to allow local governments to address immediate needs in anticipation of unmitigated impacts from the project.

- Considerations.
 1. Industrial siting projects can take a year or longer to start construction after receiving their permit. Therefore, if some of the impact assistance funds can be provided shortly after permit issuance, there is likely to be sufficient time to mitigate critical or time sensitive impacts prior to start of construction.
 2. Impact assistance payments come from the general fund, specifically from sales and use taxes associated with the construction of the facility. Therefore, impact assistance funds distributed prior to the start of construction would pose a risk to general funds should the project not be constructed.
 3. Requiring a bond from the applicant to cover the costs of any impact assistance payments made shortly after permit issuance would provide a backstop for the state should the project not be constructed and the taxes not collected.
 4. The applicant would need to provide a bond for any preconstruction distributions to protect the state general fund in case the project does not get built.
- Note that 35-12-113(e) provides the following:

“A permit may be issued conditioned upon the applicant furnishing a bond to the division in an amount determined by the ~~director~~ **council** from which local governments may recover expenditures in preparation for impact to be caused by a facility if the permit holder does not complete the facility proposed. The permit holder is not liable under the bond if the holder is prevented from completing the facility proposed by circumstances beyond his control.”

Possible Solution: Amend W.S. 39-15-111(c) and W.S. 39-16-111(d) as follows:

If any person commences after the effective date of this act to construct an industrial facility, as that term is defined in W.S. 35-12-102, under a permit issued pursuant to W.S. 35-12-106, or if the federal or state government commences to construct any project within this state with an estimated construction cost as specified in the definition of industrial facility in W.S. 35-12-102 the department of revenue shall thereafter pay to the county treasurer and the county treasurer will distribute to the county, cities and towns of that county in which the industrial facility or project is located, impact assistance payments from the monies available under paragraph (b)(i) of this section. Each payment to the county treasurer shall be equal to an amount determined by the industrial siting council under this subsection and shall continue during the period of construction except that in the case of an industrial facility or a federal or state government project which is expected to continue in phases for an indefinite period of time, the department of revenue shall discontinue payments under this section when construction of any phase has ceased or been substantially completed for twelve (12) consecutive months. The person constructing the industrial facility and the counties affected by the construction of the facility shall provide evidence at the public hearing held pursuant to W.S. 35-12-110(f)(i) of the mitigated and unmitigated impacts that the construction will have on the counties, cities and towns determined by the industrial siting council to be effected by the construction of the industrial facility. The industrial siting council shall review the evidence of the impact and determine, applying a preponderance of evidence standard, the dollar amount of the unmitigated impacts. The council shall state, in the order under W.S. 35-12-113(a), the total dollar amount of the impact assistance payment and include specific findings of fact detailing the basis for the total dollar amount determination and if requested by the affected county, city or town, its justification for rejecting, in whole or in part, an application for an impact assistance payment. The impact assistance payment shall be distributed by the department of revenue in an amount and on a schedule determined by the council, based on evidence presented at the hearing. **The council may include in the impact assistance payment schedule, a preconstruction payment, not to exceed 20% of the total impact assistance payments awarded to an affected county, city or town, and to be distributed by the department of revenue, within 45 days of the date**

of permit issuance. Any permit issued by the council that includes distribution of a scheduled payment to be made prior to the start of permit construction, shall also include a condition that the applicant provide a bond to the department of environmental quality for the amount of the preconstruction payment. The bond shall be submitted to the Department of Environmental Quality within 45 days of permit issuance. Under no circumstances shall the total dollar amount of the impact assistance payment exceed the maximum allowable percentage specified in this subsection of the total estimated material costs of the facility, as those costs are determined by the council.