

HOUSE BILL NO. HB0062

Local impact assistance payments-percentage discretion.

Sponsored by: Representative(s) Larson, JT, Banks, Sommers, Stith, Tarver and Wylie and Senator(s) Dockstader, Jones and Kolb

A BILL

for

1 AN ACT relating to impact assistance payments; providing
2 that the industrial siting council may increase the maximum
3 allowable percentage of impact assistance payments
4 regardless of project cost as specified; specifying
5 applicability; and providing for an effective date.

6

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

8

9 **Section 1.** W.S. 39-15-111(c) and 39-16-111(d) are
10 amended to read:

11

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

13

14 (c) If any person commences after the effective date
15 of this act to construct an industrial facility, as that

1 term is defined in W.S. 35-12-102, under a permit issued
2 pursuant to W.S. 35-12-106, or if the federal or state
3 government commences to construct any project within this
4 state with an estimated construction cost as specified in
5 the definition of industrial facility in W.S. 35-12-102 the
6 department of revenue shall thereafter pay to the county
7 treasurer and the county treasurer will distribute to the
8 county, cities and towns of that county in which the
9 industrial facility or project is located, impact
10 assistance payments from the monies available under
11 paragraph (b)(i) of this section. Each payment to the
12 county treasurer shall be equal to an amount determined by
13 the industrial siting council under this subsection and
14 shall continue during the period of construction except
15 that in the case of an industrial facility or a federal or
16 state government project which is expected to continue in
17 phases for an indefinite period of time, the department of
18 revenue shall discontinue payments under this section when
19 construction of any phase has ceased or been substantially
20 completed for twelve (12) consecutive months. The person
21 constructing the industrial facility and the counties
22 affected by the construction of the industrial facility
23 shall provide evidence at the public hearing held pursuant

1 to W.S. 35-12-110(f)(i) of the mitigated and unmitigated
2 impacts that the construction will have on the counties,
3 cities and towns determined by the industrial siting
4 council to be affected by the construction of the
5 industrial facility. The industrial siting council shall
6 review the evidence of the impacts and determine, applying
7 a preponderance of evidence standard, the dollar amount of
8 the unmitigated impacts. The council shall state, in the
9 order issued under W.S. 35-12-113(a), the total dollar
10 amount of the impact assistance payment and include
11 specific findings of fact detailing the basis for the total
12 dollar amount determination and if requested by the
13 affected county, city or town, its justification for
14 rejecting, in whole or in part, an application for an
15 impact assistance payment. The impact assistance payment
16 shall be distributed by the department of revenue in an
17 amount and on a schedule determined by the council, based
18 on evidence presented at the hearing. Under no
19 circumstances shall the total dollar amount of the impact
20 assistance payment exceed the maximum allowable percentage
21 specified in this subsection of the total estimated
22 material costs of the facility, as those costs are
23 determined by the council. The maximum allowable percentage

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

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

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

1 first be submitted not later than one (1) year after the
2 impact assistance payment is approved and annually each
3 year thereafter for the duration in which distributions are
4 made and until all distributions are expended. The
5 industrial siting council shall adopt rules as necessary to
6 implement this subsection.

7

8 **39-16-111. Distribution.**

9

10 (d) 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

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

1 affected county, city or town, its justification for
2 rejecting, in whole or in part, an application for an
3 impact assistance payment. The impact assistance payment
4 shall be distributed by the department of revenue in an
5 amount and on a schedule determined by the council, based
6 on evidence presented at the hearing. Under no
7 circumstances shall the total dollar amount of the impact
8 assistance payment exceed the maximum allowable percentage
9 specified in this subsection of the total estimated
10 material costs of the facility, as those costs are
11 determined by the council. The maximum allowable percentage
12 shall be two and twenty-five hundredths percent (2.25%) for
13 facilities with total estimated materials costs of three
14 hundred fifty million dollars (\$350,000,000.00) or less
15 except as otherwise provided in this subsection, two
16 percent (2%) for facilities with total estimated materials
17 costs in excess of three hundred fifty million dollars
18 (\$350,000,000.00) but less than eight hundred fifty million
19 dollars (\$850,000,000.00) and one and one-half percent
20 (1.50%) for facilities with total estimated materials costs
21 of eight hundred fifty million dollars (\$850,000,000.00) or
22 more. ~~For facilities with total estimated materials costs~~
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1 ~~less,~~ The council may increase the maximum allowable
2 percentage to a percentage determined by the council, not
3 ~~more than~~ to exceed two and seventy-six hundredths percent
4 (2.76%), if the council includes in the specific findings
5 required under this subsection that the otherwise
6 applicable maximum allowable percentage ~~of two and~~
7 ~~twenty-five hundredths percent (2.25%)~~ specified in this
8 subsection is insufficient to mitigate the identified
9 impacts. The council shall submit a report to the joint
10 appropriations committee and the joint minerals, business
11 and economic development interim committee not later than
12 ten (10) business days after increasing the maximum
13 allowable percentage as specified in this subsection,
14 including data to support the increase. The impact
15 assistance payments shall be distributed to the county
16 treasurer and the county treasurer will distribute to the
17 county and to the cities and towns therein based on a ratio
18 established by the industrial siting council during a
19 public hearing held in accordance with W.S.
20 35-12-110(f)(i). In determining the distribution ratio, the
21 industrial siting council may consider the extent and
22 location of the unmitigated impacts, the populations of the
23 affected counties, cities and towns, including any

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

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

19

20 **Section 2.** This act shall only apply to impact
21 assistance payments for industrial facility permit
22 applications submitted on and after the effective date of
23 this act.

1

2 **Section 3.** This act is effective immediately upon
3 completion of all acts necessary for a bill to become law
4 as provided by Article 4, Section 8 of the Wyoming
5 Constitution.

6

7

(END)