

HOUSE BILL NO. HB0282

Impact assistance for development projects.

Sponsored by: Representative(s) Parady and Meyer

A BILL

for

1 AN ACT relating to the administration of government;
2 providing for loans to political subdivisions for
3 infrastructure for anticipated development as specified;
4 providing for repayment of loans from specified revenue
5 sources; providing for increased distribution of sales and
6 use taxes to local governments for qualifying projects;
7 specifying procedures; making conforming amendments; and
8 providing for an effective date.

9

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

11

12 **Section 1.** W.S. 16-1-111 and 35-12-201 through
13 35-12-204 are created to read:

14

15 **16-1-111. Impact assistance loans; amount; repayment;**
16 **conditions; definitions.**

17

1 (a) Upon recommendation of the industrial siting
2 council pursuant to W.S. 35-12-202, the state loan and
3 investment board may make loans to one (1) or more
4 counties, cities or towns, from the permanent Wyoming
5 mineral trust fund, not to exceed one hundred million
6 dollars (\$100,000,000.00) including all loans previously
7 made and outstanding under this section. All loans under
8 this section shall be subject to the following:

9
10 (i) No loan shall be made in an amount greater
11 than can be repaid from the repayment sources specified in
12 subsection (e) of this section which are expected to be
13 available to the borrowing entity over the course of the
14 scheduled loan repayment period. In determining the amount
15 to be loaned, the board shall consider anticipated revenues
16 to the borrowing entity under W.S. 39-15-111(c) and (p) and
17 39-16-111(d) and (p) and any expected increase in ad
18 valorem tax distributions to the borrowing entity under
19 W.S. 39-13-111 as a result of the development identified in
20 the application under W.S. 35-12-201;

21
22 (ii) The repayment period for any loan shall not
23 exceed twenty (20) years from the date the loan is made;

24

1 (iii) Loans shall be made at no interest;

2

3 (iv) A loan origination fee of one percent (1%)
4 of the loan shall be paid to the board by the borrowing
5 entity. The revenue produced by this fee shall be credited
6 to the loss reserve account as provided by W.S. 16-1-110;

7

8 (v) The board shall receive annual financial
9 statements from entities receiving loans under this
10 subsection;

11

12 (vi) No loan shall be made without the written
13 opinion of the attorney general certifying the legality of
14 the transaction and all documents connected therewith.

15

16 (b) The limitation on legislatively designated
17 investments under W.S. 9-4-712 applies to this investment.

18

19 (c) In making loans pursuant to this section, the
20 board shall adopt rules and establish requirements and
21 standards as it determines to be necessary and advisable.

22

23 (d) The board may determine to make loans under this
24 section and may impose terms, conditions and limits on the

1 loans as it finds, in its discretion, are necessary to
2 protect state funds. For joint applications, the board
3 shall apportion loan repayment obligations to each
4 applicant. A decision by the board not to make a loan
5 under this section is not subject to judicial review under
6 the Wyoming Administrative Procedure Act.

7

8 (e) As a condition of receiving a loan under this
9 section, a city, town or county shall enter into agreements
10 necessary to provide that the loan shall be repaid as
11 provided in this subsection. The loan shall be repaid from
12 the city, town or county's distributions of sales and use
13 tax revenues under W.S. 39-15-111(c) and (p) and
14 39-16-111(d) and (p). If those sales and use tax revenues
15 are insufficient to repay the loan in accordance with its
16 terms, the loan agreement shall provide for up to fifty
17 percent (50%) of each of the following distributions to the
18 city, town or county to be withheld by the state treasurer
19 until complete repayment is made, with all repayments
20 deposited by the treasurer to the permanent Wyoming mineral
21 trust fund:

22

23 (i) Distributions of sales tax revenues under
24 W.S. 39-15-111 and 39-16-111;

1

2 (ii) Distributions of federal mineral royalties
3 under W.S. 9-4-601(a)(v);

4

5 (iii) Distributions of severance taxes under
6 W.S. 39-14-801(d)(v), (vi) and (viii).

7

8 (f) A loan under this section is not deemed to be a
9 general obligation of the city, town or county, and the
10 state shall not require repayment from any source other
11 than as provided in subsection (e) of this section and no
12 tax revenues levied by any borrowing entity shall be used
13 to repay the loan.

14

15

ARTICLE 2

16

IMPACT ASSISTANCE

17

18 **35-12-201. Aggregated anticipated impact assistance.**

19

20 (a) A county, city or town which may be impacted by
21 anticipated industrial facility development may
22 individually or jointly with any other impacted county,
23 city or town, apply to the council for recommendation to
24 the state loan and investment board, as an entity eligible

1 for a loan under W.S. 16-1-111. The application shall be
2 filed with the division, in a form as prescribed by council
3 rules and regulations, and shall contain the following
4 information:

5

6 (i) A description of the nature and location of
7 the anticipated development;

8

9 (ii) Estimated time of commencement of
10 construction, construction period and cost for all
11 facilities or projects involved in the development;

12

13 (iii) A listing of government infrastructure
14 improvements convenient or necessary for the anticipated
15 development, and estimated costs of the infrastructure
16 improvements;

17

18 (iv) Anticipated sales and use tax revenue
19 distributions under W.S. 39-15-111(c) and (p) and
20 39-16-111(d) and (p) and anticipated increases in ad
21 valorem tax distributions to the borrowing entity under
22 W.S. 39-13-111 as a result of the development;

23

1 (v) For joint applications, the recommended
2 apportionment of loan repayment obligations to each
3 applicant;

4
5 (vi) Any other information the applicant
6 considers relevant, or required by council rule or
7 regulation.

8
9 **35-12-202. Action on application; hearing;**
10 **recommendation.**

11
12 (a) Not more than forty-five (45) days after
13 receiving a completed application under W.S. 35-12-201, the
14 council shall hold a public hearing to determine the local
15 government's eligibility for a loan under W.S. 16-1-111.
16 All local governments making application shall be permitted
17 to appear at the hearing and may provide any studies,
18 investigations, reports or other documentary evidence,
19 which the governmental entity wishes the council to
20 consider. The contested case procedures of the Wyoming
21 Administrative Procedure Act do not apply to a hearing
22 under this article. The council shall deny the application,
23 or if it determines the following are met, recommend that a
24 loan be made:

1

2 (i) The anticipated facility or project
3 development is more likely than not to occur within any
4 county making application or within the boundaries of the
5 county in which any city or town making application is
6 located;

7

8 (ii) The government infrastructure improvements
9 are convenient or necessary for the anticipated
10 development;

11

12 (iii) The anticipated development will have an
13 aggregate estimated construction cost of at least fifty
14 million dollars (\$50,000,000.00), excluding all local
15 government expenditures. The council shall adjust this
16 amount, up or down, each year using recognized construction
17 cost indices as the council determines to be relevant to
18 the actual change in construction cost applicable to the
19 general type of construction covered under this chapter;

20

21 (iv) The governmental entity making application,
22 or in the case of a joint application each governmental
23 entity making application, will receive additional sales
24 and use tax revenue distributions under W.S. 39-15-111(c)

1 or (p) and 39-16-111(d) or (p), as a result of the
2 anticipated development.

3

4 (b) Within ten (10) days from the date of completion
5 of the hearing the council shall make complete findings,
6 and deny the application or recommend a loan be made under
7 W.S. 16-1-111. If the council recommends that a loan be
8 made, it shall immediately transmit its recommendation,
9 findings and all records regarding the application to the
10 state loan and investment board.

11

12 **35-12-203. Council determination not subject to**
13 **review.**

14

15 No recommendation or finding by the council under this
16 article is subject to judicial review under the Wyoming
17 Administrative Procedure Act.

18

19 **35-12-204. Definitions.**

20

21 (a) The definitions in W.S. 35-12-102 apply to this
22 article except:

23

1 (i) "Facility" shall mean any industrial
2 facility, or state or federal project, regardless of cost;

3
4 (ii) "Local government" shall include only
5 counties, cities and towns.

6
7 **Section 2.** W.S. 9-4-701(d)(intro), (e)(intro) and
8 (f)(intro), 9-4-703(e), 9-4-712(a) and (b) by creating a
9 new paragraph (xii), 16-1-110, 35-11-110(e), 35-12-105(c),
10 39-15-111(b)(i) and by creating new subsections (p) and (q)
11 and 39-16-111(b)(i) and by creating new subsections (p) and
12 (q) are amended to read:

13
14 **9-4-701. Permissible investments; treasurer's rules**
15 **and regulations.**

16
17 (d) The limitation on legislatively designated
18 investments under W.S. 9-4-712 applies to this investment.
19 To assist in providing housing to persons of moderate
20 income within the state of Wyoming, the state treasurer may
21 invest and keep invested not to exceed ten million dollars
22 (\$10,000,000.00) of any state permanent funds available for
23 investment, excluding permanent funds allocated for joint
24 powers loans, infrastructure development loans under W.S.

1 16-1-111, farm and ranch loans or water development loans,
2 in real estate mortgages held by any bank, mortgage banking
3 company or savings and loan association authorized to do
4 business in the state of Wyoming as provided in this
5 subsection. All mortgages invested in by the state
6 treasurer shall represent a valid first lien upon the real
7 property located within the state of Wyoming secured by the
8 mortgages and shall not be for more than ninety-five
9 percent (95%) of the current fair market value of the
10 mortgaged property or the maximum amount allowed by federal
11 regulatory agencies. As used in this subsection, real
12 property means a single family dwelling to be the primary
13 residence of the owner on the date the mortgage is
14 executed. All mortgages shall be insured through government
15 agencies or through private mortgage insurance companies,
16 or shall be assigned to the state treasurer by the bank,
17 mortgage banking company or savings and loan association
18 with recourse when individual mortgages are accepted by the
19 state. Investment by the state treasurer shall not exceed
20 ninety percent (90%) of the face value of a mortgage and
21 the financial institution originating the loan and
22 mortgage, or its assignee in a case of an assignment, shall
23 retain at least ten percent (10%) of the face value of the
24 mortgage. Any assignment of mortgages to the state

1 treasurer in accordance with this subsection shall be in
2 increments of not less than three hundred thousand dollars
3 (\$300,000.00) and shall provide that the bank, mortgage
4 banking company or savings and loan association originating
5 the loan and mortgage, or, if a bank, mortgage banking
6 company or savings and loan association assigns the loan
7 and mortgage, the assignee shall service the mortgage and
8 the underlying loan and make payments of principal and
9 interest to the state treasurer as provided by rule, but
10 not less often than semiannually, and in the event of
11 default of the loan or the terms of the mortgage, be
12 responsible for the collection of the debt secured by the
13 mortgage. Any bank, mortgage banking company, savings and
14 loan association or their assignee shall maintain an office
15 in the state while servicing the mortgages and underlying
16 loans. If the mortgages are pooled by a pooling and
17 servicing agreement and held by a trustee to which the
18 servicer provides mortgage trust insurance and special
19 hazard insurance, and fulfills any other requirements with
20 the result that the pool of mortgages can be represented by
21 a pass-through certificate receiving a rating of "A" or
22 better from a recognized rating agency, then the state
23 treasurer may invest in a certificate which represents the
24 entire amount of the face value of the mortgages. The

1 interest rates contained in the mortgage and the loans
2 secured by the mortgage shall not be less than ten percent
3 (10%). However, where the governor, state treasurer and
4 attorney general concur and certify in writing that the
5 corpus or income of the permanent mineral trust fund is at
6 risk due to possible default by mortgagors on loans under
7 this subsection, the state treasurer may temporarily modify
8 the interest rate of any mortgage with the concurrence of
9 all parties to the mortgage. The modification shall
10 temporarily reduce the interest rate below the limits
11 specified in this section so as to provide relief required
12 to protect the corpus or income of the permanent mineral
13 trust fund. The state treasurer shall, from time to time,
14 adopt, modify or repeal rules and regulations governing the
15 investment of state funds as provided in this subsection
16 including rules and regulations as to any or all of the
17 following:

18

19 (e) The limitation on legislatively designated
20 investments under W.S. 9-4-712 applies to this investment.
21 To assist Wyoming's small businesses, the state treasurer
22 may invest or commit to invest and keep invested an amount
23 not to exceed fifty-five million dollars (\$55,000,000.00)
24 of any state permanent funds available for investment,

1 excluding permanent funds allocated for joint powers loans,
2 infrastructure development loans under W.S. 16-1-111, farm
3 and ranch loans, water development loans, or real estate
4 mortgages, through the purchase of portions of Small
5 Business Administration loans, Farmers Home Administration
6 business and industry loans and Economic Development
7 Administration loans. No new investments pursuant to this
8 subsection shall be made after December 31, 2006.
9 Investment by the state treasurer shall be limited to the
10 portion of the loan that is guaranteed by the Small
11 Business Administration, Farmers Home Administration or
12 Economic Development Administration. Any assignment of
13 loans to the state treasurer under this subsection shall
14 provide that the Small Business Administration loan
15 participant, Farmers Home Administration loan participant
16 or Economic Development Administration loan participant
17 originating the loan and any assignee thereof shall service
18 the loan and make payments of principal and interest to the
19 state treasurer as provided by rule, and in the event of
20 default of the loan or the terms of the loan, be
21 responsible for the collection of the debt. For the first
22 five (5) years of the loan, the interest rates contained in
23 the loans shall be as established by the state treasurer
24 but not less than the yield of the five (5) year federal

1 treasury bond at the date of commitment. Following the
2 first five (5) years of the loan, the interest rate shall
3 be adjusted to the then current interest rate required in
4 the note and loan agreements. The state treasurer shall
5 promulgate rules and regulations governing the investment
6 of state funds under this subsection including the
7 following:

8

9 (f) The limitation on legislatively designated
10 investments under W.S. 9-4-712 applies to this investment.
11 The state treasurer may invest and keep invested not to
12 exceed twenty-five million dollars (\$25,000,000.00) of any
13 state permanent funds available for investment, excluding
14 permanent funds allocated for joint powers loans,
15 infrastructure development loans under W.S. 16-1-111, farm
16 and ranch loans, water development loans and mortgages or
17 loans under subsections (d) and (e) of this section,
18 through the purchase of nondelinquent federally guaranteed
19 or insured higher education loans from any nonprofit
20 Wyoming corporation organized to acquire such loans or its
21 agent, provided:

22

1 **9-4-703. State loan and investment board; rules and**
2 **regulations; reports on delinquent loans; procedures if**
3 **default results in loss to a state permanent fund.**

4
5 (e) If, as a result of default in the payment of any
6 loan made pursuant to W.S. 16-1-109 or 16-1-111, there
7 occurs a nonrecoverable loss either to the corpus of, or
8 interest due to, any permanent fund of the state, the state
9 loan and investment board shall restore the loss to the
10 permanent fund account entitled thereto using any funds
11 available in the loss reserve account created by W.S.
12 16-1-110. If the funds in the loss reserve account are
13 insufficient to restore the full amount of the loss, the
14 board shall submit a detailed report of the loss to the
15 legislature and shall request an appropriation to restore
16 the balance of the loss to the permanent fund account
17 entitled thereto.

18
19 **9-4-712. Limitation on legislatively designated**
20 **investments.**

21
22 (a) There is established a limitation on
23 legislatively designated investments as provided in this
24 section. Total investments of permanent funds of the state

1 in the items listed in subsection (b) of this section shall
2 not exceed ~~five hundred million dollars (\$500,000,000.00)~~
3 six hundred million dollars (\$600,000,000.00). Prior to the
4 convening of each general session of the legislature, the
5 state treasurer shall, after consultation with the state
6 loan and investment board, recommend to the select
7 committee on capital financing and investments whether any
8 adjustment should be made in the limitation established by
9 this section.

10
11 (b) Investments subject to the limitation in
12 subsection (a) of this section are:

13
14 (xii) Infrastructure development loans under
15 W.S. 16-1-111.

16
17 **16-1-110. Loss reserve account created; deposits;**
18 **disposition of funds.**

19
20 Revenues received by the state loan and investment board
21 for deposit in the loss reserve account pursuant to W.S.
22 16-1-109(a) and 16-1-111(a) (iv) shall be transmitted to the
23 state treasurer for deposit to the credit of the loss
24 reserve account within the earmarked revenue fund. Funds in

1 the account shall be used for the purposes specified in
2 W.S. 9-4-703(e) and to pay the administrative and legal
3 expenses of the board in making collections and foreclosing
4 on loans made pursuant to W.S. 16-1-109 and 16-1-111. If
5 at the end of any fiscal year, the amount in the loss
6 reserve account exceeds five percent (5%) of the total
7 amount of permanent funds invested by the state in loans
8 pursuant to W.S. 16-1-109 and 16-1-111, the amount in
9 excess of the five percent (5%) shall be transferred and
10 credited to the general fund.

11

12 **35-11-110. Powers of administrators of the divisions.**

13

14 (e) The administrator of the industrial siting
15 division shall enforce and administer the provisions of
16 W.S. 35-12-101 through 35-12-119 and 35-12-201 through
17 35-12-204. He shall have the powers set forth in paragraph
18 (a) (x) of this section.

19

20 **35-12-105. Appointment and duties of administrator;**
21 **staff; rules and regulations.**

22

23 (c) The director, administrator and the staff of the
24 division are authorized to the extent possible, at the

1 request of local governments, to provide technical
2 assistance to local governments in the negotiation of
3 agreements with applicants as provided for in W.S.
4 35-12-107 and 35-12-113(a)(vi) and to provide technical
5 assistance to local governments in determining eligibility
6 and making application for loans under W.S. 16-1-111.

7

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

9

10 (b) Revenues earned under W.S. 39-15-104 during each
11 fiscal year shall be recognized as revenue during that
12 fiscal year for accounting purposes. Revenue collected by
13 the department under W.S. 39-15-104 shall be transferred to
14 the state treasurer who shall:

15

16 (i) Until June 30, 2004, subject to subsection
17 (g) of this section, credit seventy and one-half percent
18 (70.5%) and thereafter sixty-nine percent (69%) to the
19 state general fund except as provided by subsections (c),
20 ~~and~~ (d) and (p) of this section;

21

22 (p) If any facility or project identified in an
23 approved application for a loan under W.S. 16-1-111 is
24 constructed within the boundaries of any governmental

1 entity making the application, the state treasurer shall
2 thereafter pay to the county treasurer and the county
3 treasurer will distribute to the county, cities and towns
4 of that county in which the project is located, impact
5 assistance payments from the monies available under
6 paragraph (b)(i) of this section. Each payment to the
7 county treasurer shall be equal to the excess of each
8 monthly payment made under paragraph (b)(iii) of this
9 section during the period of construction over the base
10 period amount and shall continue during the period of
11 construction except that in the case of an industrial
12 facility or a federal or state government project which is
13 expected to continue in phases for an indefinite period of
14 time, the state treasurer shall discontinue payments under
15 this subsection and establish a new base period when
16 construction of any phase has ceased or been substantially
17 completed for twelve (12) consecutive months. The impact
18 assistance payments shall be distributed to the county
19 treasurer and the county treasurer will distribute to the
20 county and to the cities and towns therein in the same
21 ratio as the allocation of loan repayment obligations
22 established by the state loan and investment board in an
23 approved joint application under W.S. 16-1-111, otherwise
24 one hundred percent (100%) to a sole applicant under W.S.

1 16-1-111. A governing body which is receiving funds under
2 this subsection may petition the state loan and investment
3 board for review and adjustment of the distribution ratio
4 under a joint application upon a showing of good cause. The
5 impact assistance payment under this subsection shall be in
6 addition to all other distributions under this section,
7 except that any impact assistance payment made pursuant to
8 this subsection shall be deducted from any impact
9 assistance payment which would otherwise be made under
10 subsection (c) of this section.

11
12 (q) As used in subsection (p) of this section:

13
14 (i) "Base period amount" is the average monthly
15 distribution under paragraph (b)(iii) of this section for
16 the twelve (12) month period immediately prior to the
17 commencement of construction, provided that on each
18 anniversary date of commencement of construction the state
19 treasurer shall establish a new base period amount by
20 multiplying the base period amount by a factor representing
21 the annual rate of inflation in this state for the
22 preceding twelve (12) month period as calculated by the
23 department of administration and information;

24

1 (ii) "Period of construction" begins at the
2 commencement of construction and ends when the physical
3 components of the industrial facility or federal or state
4 government project are ninety percent (90%) complete,
5 provided, if payments are already being made under
6 subsection (c) or (p) of this act, commencement of
7 construction of another industrial facility or federal or
8 state government project will not be considered for
9 purposes of establishing a new base period or determining
10 when payments will commence under this act, but will only
11 be considered for determining when the period of
12 construction ends.

13
14 **39-16-111. Distribution.**

15
16 (b) Revenues earned under this article during each
17 fiscal year shall be recognized as revenue during that
18 fiscal year for accounting purposes. Revenue collected by
19 the department from the taxes imposed by this article shall
20 be transferred to the state treasurer who shall:

21
22 (i) Until June 30, 2004, subject to subsection
23 (g) of this section, credit seventy and one-half percent
24 (70.5%) and thereafter sixty-nine percent (69%) to the

1 general fund except as provided by subsections (d), ~~and~~ (e)
2 and (p) of this section;

3
4 (p) If any facility or project identified in an
5 approved application for a loan under W.S. 16-1-111 is
6 constructed within the boundaries of any governmental
7 entity making the application, the state treasurer shall
8 thereafter pay to the county treasurer and the county
9 treasurer will distribute to the county, cities and towns
10 of that county in which the project is located, impact
11 assistance payments from the monies available under
12 paragraph (b)(i) of this section. Each payment to the
13 county treasurer shall be equal to the excess of each
14 monthly payment made under paragraph (b)(iii) of this
15 section during the period of construction over the base
16 period amount and shall continue during the period of
17 construction except that in the case of an industrial
18 facility or a federal or state government project which is
19 expected to continue in phases for an indefinite period of
20 time, the state treasurer shall discontinue payments under
21 this subsection and establish a new base period when
22 construction of any phase has ceased or been substantially
23 completed for twelve (12) consecutive months. The impact
24 assistance payments shall be distributed to the county

1 treasurer and the county treasurer will distribute to the
2 county and to the cities and towns therein in the same
3 ratio as the allocation of loan repayment obligations
4 established by the state loan and investment board in an
5 approved joint application under W.S. 16-1-111, otherwise
6 one hundred percent (100%) to a sole applicant under W.S.
7 16-1-111. A governing body which is receiving funds under
8 this subsection may petition the state loan and investment
9 board for review and adjustment of the distribution ratio
10 under a joint application upon a showing of good cause. The
11 impact assistance payment under this subsection shall be in
12 addition to all other distributions under this section,
13 except that any impact assistance payment made pursuant to
14 this subsection shall be deducted from any impact
15 assistance payment which would otherwise be made under
16 subsection (d) of this section.

17

18 (q) As used in subsection (p) of this section:

19

20 (i) "Base period amount" is the average monthly
21 distribution under paragraph (b)(iii) of this section for
22 the twelve (12) month period immediately prior to the
23 commencement of construction, provided that on each
24 anniversary date of commencement of construction the state

1 treasurer shall establish a new base period amount by
2 multiplying the base period amount by a factor representing
3 the annual rate of inflation in this state for the
4 preceding twelve (12) month period as calculated by the
5 department of administration and information;

6
7 (ii) "Period of construction" begins at the
8 commencement of construction and ends when the physical
9 components of the industrial facility or federal or state
10 government project are ninety percent (90%) complete,
11 provided, if payments are already being made under
12 subsection (c) or (p) of this act, commencement of
13 construction of another industrial facility or federal or
14 state government project will not be considered for
15 purposes of establishing a new base period or determining
16 when payments will commence under this act, but will only
17 be considered for determining when the period of
18 construction ends.

19
20 **Section 3.** This act is effective July 1, 2003.

21
22 (END)