

ENROLLED ACT NO. 38, SENATE

SIXTIETH LEGISLATURE OF THE STATE OF WYOMING
2010 BUDGET SESSION

AN ACT relating to industrial siting; amending jurisdictional criteria; amending and adding definitions; expanding and modifying notice provisions; granting rulemaking authority as specified; modifying the information necessary in permit and waiver applications; expanding the number of state agencies involved in permitting; specifying additional issues to consider in the permitting process; requiring additional fees; defining prohibited activities; modifying exempt facilities; providing exceptions to hearing requirements; providing additional requirements and jurisdiction for wind energy facilities; repealing laws regarding incomplete applications; making an appropriation; authorizing a position; conforming provisions; and providing for an effective date.

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

Section 1. W.S. 35-12-102(a)(vii)(C), by creating a new subparagraph (E), (xi) and by creating a new paragraph (xiv), 35-12-105 by creating new subsections (d) through (f), 35-12-106(c) and (d), 35-12-107(b)(viii), by creating new paragraphs (xii) through (xiv), (h)(i), (ii), by creating a new paragraph (iii), (j)(ii), (iii) and by creating a new paragraph (iv), 35-12-109(a)(xiii)(intro), by creating new subparagraphs (Q) through (S), (xv), (xviii), by creating new paragraphs (xix) through (xxi), (b), (c) and by creating a new subsection (d), 35-12-110(a)(i), (b)(xv), (xvi), by creating new paragraphs (xvii) through (xxiii), (e)(i) and (ii), 35-12-111(a)(ii) and (iii), 35-12-113(a)(ii), (iii), by creating a new paragraph (iv) and by creating a new subsection (h), 35-12-118(a)(ii), (iii) and by creating a new paragraph (iv) and 35-12-119(c)(i) are amended to read:

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35-12-102. Definitions.

(a) As used in this chapter:

(vii) "Industrial facility" or "facility" means any industrial facility with an estimated construction cost of at least ninety-six million nine hundred thousand dollars (\$96,900,000.00) as of May 30, 1987. Exempt activities shall not be included in the estimated construction cost of an industrial facility. The council shall adjust this amount, up or down, each year using recognized construction cost indices as the council determines to be relevant to the actual change in construction cost applicable to the general type of construction covered under this chapter. "Facility" also includes, regardless of construction cost:

(C) Any commercial radioactive waste management facility defined by W.S. 35-11-103(d)(v); ~~and~~

(E) Any commercial facility generating electricity from wind and associated collector systems that:

(I) Consists of thirty (30) or more wind turbines in all planned phases of the installation; or

(II) Expand an existing installation not previously defined as a facility to include a total number of turbines greater than or equal to the thresholds in subdivision (a)(vii)(E)(I) of this section.

(xi) "Person" includes an individual, group, firm, partnership, corporation, cooperative, association, or other entity excluding the state, federal government and local government. "Person" also includes the parent

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company, partnership or holding entity for a commercial facility generating electricity from wind;

(xiv) "Collector system" means the electrical transmission infrastructure, including conductors, towers, substations, switchgear and other components necessary to deliver power from any commercial facility generating electricity from wind up to, but not including, electric substations or similar facilities necessary to interconnect to existing or proposed transmission lines that serve load or export energy from Wyoming.

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

(d) In addition to the rules and regulations adopted under subsection (b) of this section, the council shall promulgate rules and regulations prescribing decommissioning and site reclamation standards for facilities permitted pursuant to W.S. 35-12-102(a)(vii)(E). Such standards shall be designed to assure the proper decommissioning and interim and final site reclamation of commercial facilities generating electricity from wind during construction and operation of the facility, at the end of their useful life, upon revocation of a permit authorizing their operation or upon the happening of any event which causes operations to cease.

(e) In addition to the rules and regulations adopted under subsection (b) of this section, the council shall promulgate rules and regulations prescribing financial assurance requirements for facilities permitted pursuant to W.S. 35-12-102(a)(vii)(E). These rules and regulations shall not apply to facilities that are public utilities and regulated by the Wyoming public service commission. The rules and regulations shall be designed to provide adequate

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assurance that the permitted facilities will be properly reclaimed and decommissioned when appropriate. The elements to consider when establishing adequate levels of financial assurance shall include credit worthiness, financial strength, credit history, credit rating and any other factors that reasonably bear on the decision to accept a financial assurance. The financial assurance may be in any form acceptable to the council and can include a corporate guarantee, letter of credit, bond, deposit account or insurance policy.

(f) In addition to the rules and regulations adopted under subsection (b) of this section, the council shall promulgate rules and regulations requiring applicants for facilities described in W.S. 35-12-102(a)(vii)(E) and (F) to provide notice to record owners of mineral rights located on or under the lands where the proposed facility will be constructed.

35-12-106. Permit from council required prior to commencing construction of facility; electronic permitting; amendments; exceptions.

(c) Except as provided in subsection (d) of this section, the council may allow the amendment of a permit or application for a permit for good cause if the holder demonstrates to the council at its next meeting that the requested change is in compliance with local ordinances and applicable land use plans and will not significantly add to adverse environmental, social and economic impact in the county-impacted area.

(d) On an application for an amendment of a permit, the council shall hold a hearing in the same manner as a hearing is held on an application for a permit if in the council's opinion the requested change in the facility

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would result in a significant adverse increase in any environmental, social or economic impact of the facility or a change in the location of all or a portion of the facility ~~except as otherwise provided in the original application for alternate locations for the facility~~ unless the change in location was specifically approved by the council in the permit.

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

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

(viii) A ~~brief~~ description of the methods and strategies the applicant will use to maximize the employment and utilization of the existing local or in-state contractors and labor force during the construction and operation of the facility;

(xii) Certification that the governing bodies of all local governments within the potentially impacted area were provided notification, a description of the proposed project and an opportunity to ask the applicant questions at least thirty (30) days prior to submission of the application;

(xiii) For facilities permitted pursuant to W.S. 35-12-102(a)(vii)(E), a site reclamation and decommissioning plan, which shall be updated every five (5) years and a description of a financial assurance plan which will assure that all facilities will be properly reclaimed and decommissioned. All such plans, unless otherwise exempt, shall demonstrate compliance with any rules or

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regulations adopted by the council pursuant to W.S. 35-12-105(d) and (e);

(xiv) Information demonstrating the applicant's financial capability to construct, maintain, operate, decommission and reclaim the facility.

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

(i) That the facility would not produce an unacceptable environmental, social or economic impact;~~and~~

(ii) That the applicant has reached agreement with local governments affected by the facility on the mitigation required to alleviate adverse effects resulting from the facility;~~and~~

(iii) That the applicant has financial resources to construct, maintain, operate, decommission and reclaim the facility.

(j) Within ten (10) days from the date of completion of the hearing the council shall make complete findings, issue an opinion and render a decision upon the record, either granting or denying the request for a waiver. The council shall grant a request for a waiver either as proposed or as modified by the council if it finds and determines that:

(ii) The applicant has discussed the proposed facility with all local governments potentially affected by the project;~~and~~

(iii) The proposed facility is in compliance with all local ordinances and land use plans;~~and~~

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(iv) The applicant has financial resources to construct, maintain, operate, decommission and reclaim the facility.

35-12-109. Application for permit; form; fee; financial accounting.

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

(xiii) ~~Preliminary evaluations of or~~ An evaluation of potential impacts together with any plans and proposals for alleviating social, and economic ~~or environmental~~ impacts upon local ~~government~~ governments or ~~any~~ special districts and alleviating environmental impacts which may result from the proposed facility. ~~which~~ The evaluations, plans and proposals shall cover the following:

(Q) Agriculture;

(R) Terrestrial and aquatic wildlife;

(S) Threatened, endangered and rare species and other species of concern identified in the state wildlife action plan as prepared by the Wyoming game and fish department.

(xv) What other local, state or federal permits and approvals are required;

(xviii) A ~~brief~~ description of the methods and strategies the applicant will use to maximize employment and utilization of the existing local or in-state

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contractors and labor force during the construction and operation of the facility;~~i-~~

(xix) Certification that the governing bodies of all local governments which will be primarily affected by the proposed facility were provided notification, a description of the proposed project and an opportunity to ask the applicant questions at least thirty (30) days prior to submission of the application;

(xx) For facilities permitted pursuant to W.S. 35-12-102(a)(vii)(E), a site reclamation and decommissioning plan, which shall be updated every five (5) years, and a description of a financial assurance plan which will assure that all facilities will be properly reclaimed and decommissioned. All such plans, unless otherwise exempt, shall demonstrate compliance with any rules or regulations adopted by the council pursuant to W.S. 35-12-105(d) and (e);

(xxi) Information demonstrating the applicant's financial capability to construct, maintain, operate, decommission and reclaim the facility.

(b) At the time of filing an application or a written request for a waiver of the application provisions of this chapter as provided in W.S. 35-12-107, or as subsequently required by the director, an applicant shall pay a fee to be determined by the director based upon the estimated cost of investigating, reviewing, processing and serving notice of an application, ~~and~~ inspection and compliance activities and processing application update requests. The fee shall be credited to a separate account and shall be used by the division as required to investigate, review, process and serve notice of the application, ~~and~~ to hold a hearing in

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case of a request for waiver and to pay the reasonable costs of any meeting or hearing associated with permit compliance. Unused fees shall be refunded to the applicant. The maximum fee chargeable shall not exceed one-half of one percent (0.5%) of the estimated construction cost of the facility or one hundred thousand dollars (\$100,000.00), whichever is less.

(c) The director shall provide the applicant with a full financial accounting, including but not limited to all materials, labor and overhead costs relating to the expenditures of the fee at the time of the council's decision as provided in W.S. 35-12-113 or at the completion of construction, whichever occurs later.

(d) At any time after the fee required by subsection (b) of this section has been exhausted or refunded and in addition to the fee imposed under subsection (b) of this section, the applicant may be required to pay a fee, as determined by the director, for the costs of any meeting or hearing associated with permit compliance. The director shall provide the applicant with a full financial accounting for the expenditure of the fee, including but not limited to all materials, labor and overhead costs, at the conclusion of the council meeting or hearing.

35-12-110. Service of notice of application; information and recommendations; application deficiencies; procedure; jurisdiction; hearing.

(a) Not more than ten (10) days following receipt of an application for a permit, the director shall:

(i) Serve ~~notice~~ an electronic or physical copy of the application upon the governing bodies of local government which will be primarily affected by the proposed

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facility, ~~and the notice shall refer to~~ together with notice of the applicable provisions of W.S. 35-12-111;

(b) The division shall obtain information and recommendations from the following state agencies relative to the impact of the proposed facility as it applies to each agency's area of expertise:

(xv) Department of revenue; ~~and~~

(xvi) The Wyoming business council; ~~and~~

(xvii) Department of workforce services;

(xviii) Office of state lands and investments;

(xix) Department of employment;

(xx) Department of state parks and cultural resources;

(xxi) Department of fire prevention and electrical safety;

(xxii) Department of family services;

(xxiii) Oil and gas conservation commission.

(e) Upon receipt of the additional information specified in subsection (d) of this section, the director shall either notify the applicant that the application is complete or notify the applicant of continued deficiencies. The applicant shall provide the required information within fifteen (15) days of receipt of the notice of continued deficiency. Upon receipt of the second deficiency notice, the applicant may:

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(i) Provide the required information within the time allotted; or

(ii) Withdraw the application. ~~;~~ ~~or~~

35-12-111. Parties to permit proceeding; waiver by failure to participate.

(a) The parties to a permit proceeding include:

(ii) Each local government entitled to receive ~~service of~~ a copy of the application under W.S. 35-12-110(a)(i);

(iii) Any person residing in a local government entitled to receive ~~service of~~ a copy of the application under W.S. 35-12-110(a)(i) including any person holding record title to lands directly affected by construction of the facility and any nonprofit organization with a Wyoming chapter, concerned in whole or in part to promote conservation or natural beauty, to protect the environment, personal health or other biological values, to preserve historical sites, to promote consumer interests, to represent commercial and industrial groups, or to promote the orderly development of the areas in which the facility is to be located. In order to be a party the person or organization must file with the office a notice of intent to be a party not less than twenty (20) days before the date set for the hearing.

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

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(a) Within forty-five (45) days from the date of completion of the hearing the council shall make complete findings, issue an opinion and render a decision upon the record, either granting or denying the application as filed, or granting it upon terms, conditions or modifications of the construction, operation or maintenance of the facility as the council deems appropriate. The council shall not consider the imposition of conditions which address impacts within the area of jurisdiction of any other regulatory agency in this state as described in the information provided in W.S. 35-12-110(b), unless the other regulatory agency requests that conditions be imposed. The council may consider direct or cumulative impacts not within the area of jurisdiction of another regulatory agency in this state. The council shall grant a permit either as proposed or as modified by the council if it finds and determines that:

(ii) The facility will not pose a threat of serious injury to the environment nor to the social and economic condition or inhabitants or expected inhabitants in the affected area; ~~and~~

(iii) The facility will not substantially impair the health, safety or welfare of the inhabitants; ~~and~~ and

(iv) The applicant has financial resources to construct, maintain, operate, decommission and reclaim the facility.

(h) For applicants subject to W.S. 35-12-105(e), a permit may be issued conditioned upon the applicant furnishing a bond or other financial assurance acceptable to the division in an amount determined by the director to cover the cost of decommissioning and reclaiming the facility.

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35-12-118. Penalties for violations; civil action by attorney general.

(a) No person shall:

(ii) Construct, operate or maintain a facility, after having first obtained a permit, other than in specific compliance with the permit;~~or~~

(iii) Cause any of the acts specified in this subsection to occur;~~or~~

(iv) Operate or maintain an industrial facility without having first obtained the permit required under this chapter.

35-12-119. Exemptions; information required.

(c) The construction, operation and maintenance of the following activities are exempt from this chapter:

(i) Electric transmission lines ~~not exceeding five hundred thousand (500,000) with a maximum operating voltage of less than one hundred sixty thousand (160,000) volts,~~ except:

(A) Any collector system, regardless of voltage, associated with a commercial facility generating electricity from wind and which meets the definition of an industrial facility pursuant to W.S. 35-12-102(a)(vii)(E) shall not be exempt;

(B) A commercial facility generating electricity from wind that is exempt from W.S. 35-12-102(a)(vii)(E) shall not become subject to this

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chapter because its collector system is greater than one hundred sixty thousand (160,000) volts.

Section 2. W.S. 35-12-110(e)(iii) is repealed.

Section 3.

(a) Notwithstanding section 1 of this act, if 2010 House Bill 0072 is enacted into law, the amendments to W.S. 35-12-105 by creating new subsections (d) through (f), 35-12-107(b) by creating a new paragraph (xiii), 35-12-109(a) by creating a new paragraph (xx) and 35-12-119(c)(i) made by section 1 of this act shall not be effective and, instead, W.S. 35-12-105 by creating new subsections (d) through (f), 35-12-107(b) by creating a new paragraph (xiii), 35-12-109(a) by creating a new paragraph (xx) and 35-12-119(c)(i) are amended to read:

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

(d) In addition to the rules and regulations adopted under subsection (b) of this section, the council shall promulgate rules and regulations prescribing decommissioning and site reclamation standards for facilities permitted under W.S. 35-12-102(a)(vii)(E) and (F). Such standards shall preempt county rules or regulations concerning decommissioning and reclamation and shall be designed to assure the proper decommissioning and interim and final site reclamation of commercial facilities generating electricity from wind and wind energy facilities during construction and operation of the facility, at the end of their useful life, upon revocation of a permit authorizing their

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operation or upon the happening of any event which causes operations to cease. In the event of any conflict between a standard applied under this subsection and a valid order of the Wyoming public service commission, the order of the public service commission shall be applied.

(e) In addition to the rules and regulations adopted under subsection (b) of this section, the council shall promulgate rules and regulations prescribing financial assurance requirements for facilities permitted by it pursuant to W.S. 35-12-102(a)(vii)(E) and (F). These rules and regulations shall not apply to facilities that are public utilities and regulated by the Wyoming public service commission. These rules and regulations shall preempt county rules and regulations concerning financial assurances and shall be designed to provide adequate assurance that the permitted facilities will be properly reclaimed and decommissioned at the end of their useful life, upon revocation of a permit authorizing their operation or upon the happening of any event which causes operations to cease. The elements to consider when establishing adequate levels of financial assurance shall include credit worthiness, financial strength, credit history, credit rating and any other factors that reasonably bear upon the decision to accept a financial assurance. The financial assurance may be in any form acceptable to the council and may include a corporate guarantee, letter of credit, bond, deposit account or insurance policy.

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(f) In addition to the rules and regulations adopted under subsection (b) of this section, the council shall promulgate rules and regulations requiring applicants for facilities described in W.S. 35-12-102(a)(vii)(E) and (F) to provide notice to record owners of mineral rights located on or under the lands where the proposed facility will be constructed. Such notice may include notice by publication.

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

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

(xiii) For facilities permitted pursuant to W.S. 35-12-102(a)(vii)(E) or (F), a site reclamation and decommissioning plan, which shall be updated every five (5) years and a description of a financial assurance plan which will assure that all facilities will be properly reclaimed and decommissioned. All such plans, unless otherwise exempt, shall demonstrate compliance with any rules or regulations adopted by the council pursuant to W.S. 35-12-105(d) and (e);

35-12-109. Application for permit; form; fee; financial accounting.

(a) An application for a permit shall be filed with the division, in a form as prescribed

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by council rules and regulations, and shall contain the following information:

(xx) For facilities permitted pursuant to W.S. 35-12-102(a)(vii)(E) or (F), a site reclamation and decommissioning plan, which shall be updated every five (5) years, and a description of a financial assurance plan which will assure that all facilities will be properly reclaimed and decommissioned. All such plans, unless otherwise exempt, shall demonstrate compliance with any rules or regulations adopted by the council pursuant to W.S. 35-12-105(d) and (e);

35-12-119. Exemptions; information required.

(c) The construction, operation and maintenance of the following activities are exempt from this chapter:

(i) Electric transmission lines ~~not exceeding five hundred thousand (500,000)~~ with a maximum operating voltage of less than one hundred sixty thousand (160,000) volts, ~~+~~ except:

(A) Any collector system, regardless of voltage, associated with a commercial facility generating electricity from wind and which meets the definition of an industrial facility pursuant to W.S. 35-12-102(a)(vii)(E) and (F) shall not be exempt;

(B) A commercial facility generating electricity from wind that is exempt

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from W.S. 35-12-102(a)(vii)(E) or (F) shall not become subject to this chapter because its collector system is greater than one hundred sixty thousand (160,000) volts.

(b) This section shall not be effective if 2010 House Bill 0072 is not enacted into law.

Section 4. There is appropriated three hundred fifty-five thousand seven hundred fifty-four dollars (\$355,754.00) from the general fund and one (1) full-time position is authorized to the department of environmental quality. This appropriation shall be for the fiscal biennium beginning July 1, 2010. This appropriation shall only be expended for the purposes of this act. Notwithstanding any other provision of law, this appropriation shall not be transferred or expended for any other purpose and any unexpended, unobligated funds remaining from this appropriation shall revert as provided by law on June 30, 2012. This appropriation shall be included in the department's 2013-2014 standard biennial budget request.

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

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the Senate.

Chief Clerk