

SENATE FILE NO. SF0134

Industrial siting-wildlife mitigation.

Sponsored by: Senator(s) Hicks and Landen and
Representative(s) Byron

A BILL

for

1 AN ACT relating to industrial development and siting;
2 requiring the payment of wildlife mitigation impact costs
3 for industrial siting projects as specified; providing
4 definitions; making conforming amendments; specifying
5 applicability; requiring rulemaking; and providing for
6 effective dates.

7

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

9

10 **Section 1.** W.S. 35-12-120 is created to read:

11

12 **35-12-120. Industrial facilities; wildlife mitigation**
13 **and impact payments.**

14

1 (a) Upon receiving a request for information and
2 recommendations from the division under W.S. 35-12-110(b)
3 for the siting of an industrial facility, each eligible
4 entity may apply to the council for a wildlife impact
5 payment from the permit applicant, in accordance with all
6 of the following:

7

8 (i) The eligible entity seeking a wildlife
9 impact payment shall complete and submit an application in
10 a form and manner determined by the council;

11

12 (ii) The eligible entity shall provide the
13 following information on its application:

14

15 (A) The specific impacts on wildlife as a
16 result of the industrial facility, and evidence supporting
17 those impacts;

18

19 (B) Efforts that the eligible entity can
20 take to mitigate or otherwise reduce the impacts on
21 wildlife as a result of the industrial facility;

22

1 (C) The mitigated and unmitigated impacts
2 that the construction of the industrial facility will have
3 on wildlife;

4

5 (D) The estimated dollar amount of the
6 unmitigated impacts on wildlife;

7

8 (E) Any other information required by rule
9 of the council.

10

11 (iii) Before submitting an application under
12 this subsection, the eligible entity may negotiate with the
13 applicant of the industrial facility to determine and agree
14 upon the amount of the wildlife impact payment to be made
15 to the eligible entity. Upon entering an agreement under
16 this paragraph:

17

18 (A) The eligible entity shall submit a
19 written report to the council on reaching an agreement with
20 the applicant and the amount of the wildlife impact payment
21 that the applicant will make to the eligible entity;

22

1 (B) The council shall provide notice of the
2 agreement to the entities specified in W.S. 35-12-110(a),
3 publish notice as required under W.S. 35-12-110(a)(ii) and
4 accept public comment on the proposed payment at the public
5 hearing held under W.S. 35-12-110(f)(i). The council shall
6 not otherwise accept evidence of the wildlife impacts at
7 the hearing. Subsections (b) and (c) of this section shall
8 not apply to agreements reached under this paragraph;

9

10 (C) The council shall include in its order
11 under W.S. 35-12-113(a) the amount of the wildlife impact
12 payment that the applicant shall make to the eligible
13 entity, subject to subsections (e) through (h) of this
14 section.

15

16 (b) Upon receiving an application under this section
17 from an eligible entity, the council shall, at the public
18 hearing held under W.S. 35-12-110(f)(i), receive evidence
19 from the eligible entity and the applicant on the impacts
20 to wildlife.

21

1 (c) The council shall review the evidence of the
2 impacts and determine, applying a preponderance of the
3 evidence standard:

4

5 (i) The total dollar amount of the unmitigated
6 impacts on wildlife as a result of constructing the
7 industrial facility;

8

9 (ii) The total dollar amount of the wildlife
10 impact payment, including specific findings of fact
11 detailing the basis for the total dollar amount
12 determination;

13

14 (iii) If requested by the eligible entity, the
15 council's justification for rejecting, in whole or in part,
16 an eligible entity's requested wildlife impact payment;

17

18 (iv) The schedule of the wildlife impact
19 payment.

20

21 (d) The council shall state, in the order issued
22 under W.S. 35-12-113(a), any information provided by the
23 eligible entity under paragraph (a)(iii) of this section or

1 the determinations made under subsection (c) of this
2 section.

3

4 (e) Wildlife impact payments made and required under
5 this section shall be:

6

7 (i) Made by the applicant in accordance with the
8 council's order for the wildlife impact payment included
9 within the order issued under W.S. 35-12-113(a);

10

11 (ii) Expended by the eligible entity on
12 mitigating the identified unmitigated impacts on wildlife
13 as a result of constructing the industrial facility.

14

15 (f) In awarding or approving a wildlife impact
16 payment under this section, the council shall, in the order
17 or decision approving a permit, include the terms specified
18 in this section and any other conditions or requirements
19 for the wildlife impact payment that the council deems
20 necessary.

21

22 (g) The applicant shall make all wildlife impact
23 payments as required in the council's decision or order.

1 The applicant shall make the payment to the state
2 treasurer, who shall distribute the payment to the eligible
3 entity under the schedule and other terms specified by the
4 council.

5
6 (h) Each eligible entity receiving a wildlife impact
7 payment under this section shall keep records of all
8 wildlife impact payments received and all expenditures made
9 with funds received from the wildlife impact payment. Each
10 eligible entity shall, upon request, provide to the
11 council, the director or the administrator any or all
12 records kept by the eligible entity under this subsection.

13
14 (j) Wildlife impact payments made under this section
15 shall be separate from any impact assistance payment made
16 under W.S. 39-15-111(c) and (d) and 39-16-111(d) and (e).

17
18 **Section 2.** W.S. 9-15-104 by creating a new subsection
19 (m), 18-5-509(a), 18-5-511(a)(iv), 35-11-109(a)(xi),
20 35-11-110(e), 35-11-2101(e), 35-12-102(a) by creating a new
21 paragraph (xvi), 35-12-105(c) and 35-12-110(b) by creating
22 a new paragraph (xxiv) are amended to read:

23

1 **9-15-104. Wildlife and natural resource trust account**
2 **board established; terms; meetings; duties.**

3
4 (m) The board may seek wildlife impact payments from
5 an applicant for an industrial facility in accordance with
6 W.S. 35-12-120. The board shall expend any payments
7 received under W.S. 35-12-120 in accordance with the
8 requirements of W.S. 35-12-120 and any terms specified by
9 the industrial siting council.

10

11 **18-5-509. Referral.**

12

13 (a) Any board of county commissioners which receives
14 an application to permit a wind energy facility or solar
15 energy facility which does not meet the definition of an
16 industrial facility as defined in W.S. 35-12-102(a)(vii)(E)
17 or (G) may refer the facility to the industrial siting
18 council for additional permitting consistent with the
19 requirements of the Industrial Development Information and
20 Siting Act, W.S. 35-12-101 through ~~35-12-119~~ 35-12-120, but
21 the provisions of W.S. 39-15-111 and 39-16-111 shall not
22 apply. A referral shall be made only when a board of
23 county commissioners finds there are potentially

1 significant adverse environmental, social or economic
2 issues which the county board of commissioners does not
3 have the expertise to consider or authority to address.

4

5 **18-5-511. Revocation or suspension of permit.**

6

7 (a) A permit may be revoked or suspended for:

8

9 (iv) Failure of the proposed facility to receive
10 a required permit from the industrial siting council
11 pursuant to the Industrial Development Information and
12 Siting Act, W.S. 35-12-101 through ~~35-12-119~~ 35-12-120;

13

14 **35-11-109. Powers and duties of director.**

15

16 (a) In addition to any other powers and duties
17 imposed by law, the director of the department shall:

18

19 (xi) Designate authorized officers, employees or
20 representatives of the department to monitor the air,
21 water, and land quality, and solid waste management
22 operations of all facilities which have been granted
23 permits under W.S. 35-12-101 through ~~35-12-119~~ 35-12-120,

1 for assuring continuing compliance with conditions and
2 requirements of their permits and for discovering and
3 preventing noncompliance with the permits or violations of
4 law;

5

6 **35-11-110. Powers of administrators of the divisions.**

7

8 (e) The administrator of the industrial siting
9 division shall enforce and administer the provisions of
10 W.S. 35-12-101 through ~~35-12-119~~35-12-120. He shall have
11 the powers set forth in paragraph (a)(x) of this section.

12

13 **35-11-2101. Advanced nuclear reactors; requirements.**

14

15 (e) The provisions of the Industrial Development
16 Information and Siting Act, W.S. 35-12-101 through
17 ~~35-12-119~~35-12-120, shall apply only to the extent that
18 those provisions do not interfere with, contradict or
19 duplicate any requirements of the United States Nuclear
20 Regulatory Commission.

21

22 **35-12-102. Definitions.**

23

1 (a) As used in this chapter:

2

3 (xvi) "Eligible entity" means the Wyoming game
4 and fish commission and the Wyoming wildlife and natural
5 resource trust account board.

6

7 **35-12-105. Appointment and duties of administrator;**
8 **staff; rules and regulations.**

9

10 (c) The director, administrator and the staff of the
11 division are authorized to the extent possible:7

12

13 (i) At the request of local governments, to
14 provide technical assistance to local governments in the
15 preparation of anticipated impacts related to a proposed
16 project consistent with W.S. 39-15-111(c) and (d) and
17 39-16-111(d) and (e) and negotiation of agreements with
18 applicants as provided for in W.S. 35-12-107;

19

20 (ii) At the request of an eligible entity, to
21 provide technical assistance to the eligible entity in the
22 preparation of anticipated impacts to wildlife related to a
23 proposed project, in providing recommendations under W.S.

1 35-12-110(b) and for the negotiation of agreements with
2 applicants under W.S. 35-12-120.

3
4 **35-12-110. Service of notice of application;**
5 **information and recommendations; application deficiencies;**
6 **procedure; jurisdiction; hearing.**

7
8 (b) The division shall obtain information and
9 recommendations from the following state agencies relative
10 to the impact of the proposed facility as it applies to
11 each agency's area of expertise:

12
13 (xxiv) The Wyoming wildlife and natural resource
14 trust account board.

15
16 **Section 3.** This act shall apply to all industrial
17 facilities as defined in W.S. 35-12-102(a)(vii) for which
18 the applicant receives a determination of jurisdiction from
19 the director of the department of environmental quality or
20 the administrator of the industrial siting division of the
21 department of environmental quality on and after July 1,
22 2025.

23

