

## Part 3 Community Impact Alleviation

### **35A-8-301 Legislative intent -- Purpose and policy.**

- (1) It is the intent of the Legislature to make available funds received by the state from federal mineral lease revenues under Section 59-21-2, bonus payments on federal oil shale lease tracts U-A and U-B, and all other bonus payments on federal mineral leases to be used for the alleviation of social, economic, and public finance impacts resulting from the development of natural resources in this state, subject to the limitations provided for in Section 35 of the Mineral Leasing Act of 1920 (41 Stat. 450, 30 U.S.C. Sec. 191).
- (2) The purpose of this part is to maximize the long term benefit of funds derived from these lease revenues and bonus payments by fostering funding mechanisms which will, consistent with sound financial practices, result in the greatest use of financial resources for the greatest number of citizens of this state, with priority given to those communities designated as impacted by the development of natural resources covered by the Mineral Leasing Act.
- (3) The policy of this state is to promote cooperation and coordination between the state and its agencies and political subdivisions with individuals, firms, and business organizations engaged in the development of the natural resources of this state. The purpose of such efforts include private sector participation, financial and otherwise, in the alleviation of impacts associated with resources development activities.

Renumbered and Amended by Chapter 212, 2012 General Session

### **35A-8-302 Definitions.**

As used in this part:

- (1) "Bonus payments" means that portion of the bonus payments received by the United States government under the Leasing Act paid to the state under Section 35 of the Leasing Act, 30 U.S.C. Sec. 191, together with any interest that had accrued on those payments.
- (2) "Impact board" means the Permanent Community Impact Fund Board created under Section 35A-8-304.
- (3) "Impact fund" means the Permanent Community Impact Fund established by this chapter.
- (4) "Interlocal Agency" means a legal or administrative entity created by a subdivision or combination of subdivisions under the authority of Title 11, Chapter 13, Interlocal Cooperation Act.
- (5) "Leasing Act" means the Mineral Lands Leasing Act of 1920, 30 U.S.C. Sec. 181 et seq.
- (6) "Qualifying sales and use tax distribution reduction" means that, for the calendar year beginning on January 1, 2008, the total sales and use tax distributions a city received under Section 59-12-205 were reduced by at least 15% from the total sales and use tax distributions the city received under Section 59-12-205 for the calendar year beginning on January 1, 2007.
- (7) "Subdivision" means a county, city, town, county service area, special service district, special improvement district, water conservancy district, water improvement district, sewer improvement district, housing authority, building authority, school district, or public postsecondary institution organized under the laws of this state.
- (8)
  - (a) "Throughput infrastructure project" means the following facilities, whether located within, partially within, or outside of the state:
    - (i) a bulk commodities ocean terminal;

- (ii) a pipeline for the transportation of liquid or gaseous hydrocarbons;
  - (iii) electric transmission lines and ancillary facilities; or
  - (iv) a shortline freight railroad and ancillary facilities.
- (b) "Throughput infrastructure project" includes:
- (i) an ownership interest or a joint or undivided ownership interest in a facility;
  - (ii) a membership interest in the owner of a facility; or
  - (iii) a contractual right, whether secured or unsecured, to use all or a portion of the throughput, transportation, or transmission capacity of a facility.

Amended by Chapter 184, 2016 General Session

**35A-8-303 Impact fund -- Deposits and contents -- Use of fund money.**

- (1) There is created an enterprise fund entitled the "Permanent Community Impact Fund."
- (2) The fund consists of:
- (a) all amounts appropriated to the impact fund under Section 59-21-2;
  - (b) bonus payments deposited to the impact fund under Subsection 59-21-1(2);
  - (c) all amounts appropriated to the impact fund under Section 53C-3-203;
  - (d) all amounts received for the repayment of loans made by the impact board under this chapter; and
  - (e) all other money appropriated or otherwise made available to the impact fund by the Legislature.
- (3) The state treasurer shall:
- (a) invest the money in the impact fund by following the procedures and requirements of Title 51, Chapter 7, State Money Management Act; and
  - (b) deposit all interest or other earnings derived from those investments into the impact fund.
- (4) The amounts in the impact fund available for loans, grants, administrative costs, or other purposes of this part shall be limited to that which the Legislature appropriates for these purposes.
- (5) Federal mineral lease revenue received by the state under the Leasing Act that is deposited into the impact fund shall be used:
- (a) in a manner consistent with the provisions of:
    - (i) the Leasing Act; and
    - (ii) this part; and
  - (b) for loans, grants, or both to state agencies or subdivisions that are socially or economically impacted by the leasing of minerals under the Leasing Act.
- (6) The money described in Subsection (2)(c) shall be used for grants to political subdivisions of the state to mitigate the impacts resulting from the development or use of school and institutional trust lands.

Renumbered and Amended by Chapter 212, 2012 General Session

**35A-8-304 Permanent Community Impact Fund Board created -- Members -- Terms -- Chair -- Expenses.**

- (1) There is created within the department the Permanent Community Impact Fund Board composed of 11 members as follows:
- (a) the chair of the Board of Water Resources or the chair's designee;
  - (b) the chair of the Water Quality Board or the chair's designee;
  - (c) the director of the department or the director's designee;

- (d) the state treasurer;
  - (e) the chair of the Transportation Commission or the chair's designee;
  - (f) a locally elected official who resides in Carbon, Emery, Grand, or San Juan County;
  - (g) a locally elected official who resides in Juab, Millard, Sanpete, Sevier, Piute, or Wayne County;
  - (h) a locally elected official who resides in Duchesne, Daggett, or Uintah County;
  - (i) a locally elected official who resides in Beaver, Iron, Washington, Garfield, or Kane County; and
  - (j) a locally elected official from each of the two counties that produced the most mineral lease money during the previous four-year period, prior to the term of appointment, as determined by the department.
- (2)
- (a) The members specified under Subsections (1)(f) through (j) may not reside in the same county and shall be:
    - (i) nominated by the Board of Directors of the Southeastern Association of Governments, Central Utah Association of Governments, Uintah Basin Association of Governments, and Southwestern Association of Governments, respectively, except that a member under Subsection (1)(j) shall be nominated by the Board of Directors of the Association of Governments from the region of the state in which the county is located; and
    - (ii) appointed by the governor with the consent of the Senate.
  - (b) Except as required by Subsection (2)(c), as terms of current board members expire, the governor shall appoint each new member or reappointed member to a four-year term.
  - (c) Notwithstanding the requirements of Subsection (2)(b), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.
  - (d) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.
- (3) The terms of office for the members of the impact board specified under Subsections (1)(a) through (1)(e) shall run concurrently with the terms of office for the councils, boards, committees, commission, departments, or offices from which the members come.
- (4) The executive director of the department, or the executive director's designee, is the chair of the impact board.
- (5) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
- (a) Section 63A-3-106;
  - (b) Section 63A-3-107; and
  - (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Renumbered and Amended by Chapter 212, 2012 General Session

**35A-8-305 Duties -- Loans -- Interest.**

- (1) The impact board shall:
- (a) make grants and loans from the amounts appropriated by the Legislature out of the impact fund to state agencies, subdivisions, and interlocal agencies that are or may be socially or economically impacted, directly or indirectly, by mineral resource development for:
    - (i) planning;
    - (ii) construction and maintenance of public facilities; and
    - (iii) provision of public services;

- (b) establish the criteria by which the loans and grants will be made;
  - (c) determine the order in which projects will be funded;
  - (d) in conjunction with other agencies of the state, subdivisions, or interlocal agencies, conduct studies, investigations, and research into the effects of proposed mineral resource development projects upon local communities;
  - (e) sue and be sued in accordance with applicable law;
  - (f) qualify for, accept, and administer grants, gifts, loans, or other funds from:
    - (i) the federal government; and
    - (ii) other sources, public or private; and
  - (g) perform other duties assigned to it under Sections 11-13-306 and 11-13-307.
- (2) Money, including all loan repayments and interest, in the impact fund derived from bonus payments may be used for any of the purposes set forth in Subsection (1)(a) but may only be given in the form of loans to be paid back into the impact fund by the agency, subdivision, or interlocal agency.
- (3) The average annual return to the impact fund on all bonus money may not be less than 1/2 of the average interest rate paid by the state on general obligation bonds issued during the most recent fiscal year in which bonds were sold.
- (4)
- (a) "Provision of public services" under Subsection (1)(a) includes contracts with public postsecondary institutions to fund research, education, or public service programs that benefit impacted counties or political subdivisions of the counties.
  - (b) Each contract under Subsection (4)(a) shall be:
    - (i) based on an application to the impact board from the impacted county; and
    - (ii) approved by the county legislative body.
  - (c) For purposes of this section, a land use plan is a public service program.

Amended by Chapter 9, 2012 General Session

Renumbered and Amended by Chapter 212, 2012 General Session

Amended by Chapter 212, 2012 General Session, (Coordination Clause)

### **35A-8-306 Powers.**

The impact board may:

- (1) appoint, where it considers this appropriate, a hearing examiner or administrative law judge with authority to conduct hearings, make determinations, and enter appropriate findings of facts, conclusions of law, and orders under authority of the impact board under Sections 11-13-306 and 11-13-307;
- (2) appoint additional professional and administrative staff necessary to effectuate Sections 11-13-306 and 11-13-307;
- (3) make independent studies regarding matters submitted to it under Sections 11-13-306 and 11-13-307 that the impact board, in its discretion, considers necessary, which studies shall be made a part of the record and may be considered in the impact board's determination; and
- (4) make rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act it considers necessary to perform its responsibilities under Sections 11-13-306 and 11-13-307.

Renumbered and Amended by Chapter 212, 2012 General Session

### **35A-8-307 Impact fund administered by impact board -- Eligibility for assistance -- Review by board -- Administration costs -- Annual report.**

- (1)
  - (a) The impact board shall:
    - (i) administer the impact fund in a manner that will keep a portion of the impact fund revolving;
    - (ii) determine provisions for repayment of loans;
    - (iii) establish criteria for determining eligibility for assistance under this part; and
    - (iv) consider recommendations from the School and Institutional Trust Lands Administration when awarding a grant described in Subsection 35A-8-303(6).
  - (b)
    - (i) The criteria for awarding loans or grants made from funds described in Subsection 35A-8-303(5) shall be consistent with the requirements of Subsection 35A-8-303(5).
    - (ii) The criteria for awarding grants made from funds described in Subsection 35A-8-303(2)(c) shall be consistent with the requirements of Subsection 35A-8-303(6).
  - (c) In order to receive assistance under this part, subdivisions and interlocal agencies shall submit formal applications containing the information that the impact board requires.
- (2) In determining eligibility for loans and grants under this part, the impact board shall consider the following:
  - (a) the subdivision's or interlocal agency's current mineral lease production;
  - (b) the feasibility of the actual development of a resource that may impact the subdivision or interlocal agency directly or indirectly;
  - (c) current taxes being paid by the subdivision's or interlocal agency's residents;
  - (d) the borrowing capacity of the subdivision or interlocal agency, including:
    - (i) its ability and willingness to sell bonds or other securities in the open market; and
    - (ii) its current and authorized indebtedness;
  - (e) all possible additional sources of state and local revenue, including utility user charges;
  - (f) the availability of federal assistance funds;
  - (g) probable growth of population due to actual or prospective natural resource development in an area;
  - (h) existing public facilities and services;
  - (i) the extent of the expected direct or indirect impact upon public facilities and services of the actual or prospective natural resource development in an area; and
  - (j) the extent of industry participation in an impact alleviation plan, either as specified in Title 63M, Chapter 5, Resource Development Act, or otherwise.
- (3) The impact board may not fund an education project that could otherwise have reasonably been funded by a school district through a program of annual budgeting, capital budgeting, bonded indebtedness, or special assessments.
- (4) The impact board may restructure all or part of the agency's or subdivision's liability to repay loans for extenuating circumstances.
- (5) The impact board shall:
  - (a) review the proposed uses of the impact fund for loans or grants before approving them and may condition its approval on whatever assurances the impact board considers necessary to ensure that proceeds of the loan or grant will be used in accordance with the Leasing Act and this part; and
  - (b) ensure that each loan specifies the terms for repayment and is evidenced by general obligation, special assessment, or revenue bonds, notes, or other obligations of the appropriate subdivision or interlocal agency issued to the impact board under whatever authority for the issuance of those bonds, notes, or obligations exists at the time of the loan.

- (6) The impact board shall allocate from the impact fund to the department those funds that are appropriated by the Legislature for the administration of the impact fund, but this amount may not exceed 2% of the annual receipts to the impact fund.
- (7) The department shall include in the annual written report described in Section 35A-1-109, the number and type of loans and grants made as well as a list of subdivisions and interlocal agencies that received this assistance.

Amended by Chapter 371, 2014 General Session

**35A-8-308 Throughput Infrastructure Fund.**

- (1) There is created an enterprise fund known as the Throughput Infrastructure Fund.
- (2) The fund consists of money generated from the following revenue sources:
  - (a) all amounts transferred to the fund under Subsection 59-12-103(14);
  - (b) any voluntary contributions received;
  - (c) appropriations made to the fund by the Legislature; and
  - (d) all amounts received from the repayment of loans made by the impact board under Section 35A-8-309.
- (3) The state treasurer shall:
  - (a) invest the money in the fund by following the procedures and requirements of Title 51, Chapter 7, State Money Management Act; and
  - (b) deposit all interest or other earnings derived from those investments into the fund.

Enacted by Chapter 184, 2016 General Session

**35A-8-309 Throughput Infrastructure Fund administered by impact board -- Uses -- Review by board -- Annual report.**

- (1) The impact board shall:
  - (a) make grants and loans from the Throughput Infrastructure Fund created in Section 35A-8-308 for a throughput infrastructure project;
  - (b) use money transferred to the Throughput Infrastructure Fund in accordance with Subsection 59-12-103(14) to provide a loan or grant to finance the cost of acquisition or construction of a throughput infrastructure project to one or more local political subdivisions, including a Utah interlocal entity created under the Interlocal Cooperation Act, Title 11, Chapter 13;
  - (c) administer the Throughput Infrastructure Fund in a manner that will keep a portion of the fund revolving;
  - (d) determine provisions for repayment of loans;
  - (e) establish criteria for awarding loans and grants; and
  - (f) establish criteria for determining eligibility for assistance under this section.
- (2) The cost of acquisition or construction of a throughput infrastructure project includes amounts for working capital, reserves, transaction costs, and other amounts determined by the impact board to be allocable to a throughput infrastructure project.
- (3) The impact board may restructure or forgive all or part of a local political subdivision's or interlocal entity's obligation to repay loans for extenuating circumstances.
- (4) In order to receive assistance under this section, a local political subdivision or an interlocal entity shall submit a formal application containing the information that the impact board requires.
- (5)
  - (a) The impact board shall:

- (i) review the proposed uses of the Throughput Infrastructure Fund for a loan or grant before approving the loan or grant and may condition its approval on whatever assurances the impact board considers necessary to ensure that proceeds of the loan or grant will be used in accordance with this section;
  - (ii) ensure that each loan specifies terms for interest deferments, accruals, and scheduled principal repayment; and
  - (iii) ensure that repayment terms are evidenced by bonds, notes, or other obligations of the appropriate local political subdivision or interlocal entity issued to the impact board and payable from the net revenues of a throughput infrastructure project.
- (b) An instrument described in Subsection (5)(a)(iii) may be:
- (i) non-recourse to the local political subdivision or interlocal entity; and
  - (ii) limited to a pledge of the net revenues from a throughput infrastructure project.
- (6)
- (a) Subject to the restriction in Subsection (6)(b), the impact board shall allocate from the Throughput Infrastructure Fund to the board those amounts that are appropriated by the Legislature for the administration of the Throughput Infrastructure Fund.
  - (b) The amount described in Subsection (6)(a) may not exceed 2% of the annual receipts to the fund.
- (7) The board shall include in the annual written report described in Section 35A-1-109:
- (a) the number and type of loans and grants made under this section; and
  - (b) a list of local political subdivisions or interlocal entities that received assistance under this section.

Enacted by Chapter 184, 2016 General Session