

Effective 5/5/2021

Part 3
Community Impact Fund Act

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 planning, construction and maintenance of public facilities, and provision of public service, 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) To the extent allowed under the Mineral Leasing Act, any ambiguity as to whether a particular use of the lease revenue and bonus payments described in Subsection (1) is a permissible use under this part shall be resolved in favor of upholding the use.
- (3) 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.
- (4) The policy of this state is to promote cooperation and coordination between the state and the state's agencies and political subdivisions with individuals, firms, and business organizations engaged in the development of the natural resources of this state.

Amended by Chapter 339, 2021 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)
 - (a) "Planning" means any of the following performed by or on behalf of the state, a subdivision, or an interlocal entity:
 - (i) a study, analysis, plan, or survey; or
 - (ii) activities necessary to obtain a permit or land use approval, including review to determine the need, cost, or feasibility of obtaining a permit or land use approval.

- (b) "Planning" includes:
 - (i) the preparation of maps and guidelines;
 - (ii) land use planning;
 - (iii) a study or analysis of:
 - (A) the social or economic impacts associated with natural resource development;
 - (B) the demand for the transportation of individuals or goods;
 - (C) state, regional, and local development and growth;
 - (D) population and employment;
 - (E) development related to natural resources; and
 - (F) as related to any other activity described in this Subsection (7), engineering, financial analysis, legal analysis, or any other analysis helpful to the state, subdivision, or interlocal agency; and
 - (iv) any activity described in this Subsection (7) regardless of whether the activity is for a public facility or a public service.
- (8) "Public facility" means a facility:
 - (a) in whole or in part, owned, controlled, or operated by the state, a subdivision, or an interlocal agency; and
 - (b) that serves a public purpose.
- (9)
 - (a) "Public service" means a service that:
 - (i) is provided, in whole or in part, by or on behalf of the state, a subdivision, or an interlocal agency; and
 - (ii) serves a public purpose.
 - (b) "Public service" includes:
 - (i) a service described in Subsection (9)(a) regardless of whether the service is provided in connection with a public facility;
 - (ii) the cost of providing a service described in Subsection (9)(a), including administrative costs, wages, and legal fees; and
 - (iii) a contract with a public postsecondary institution to fund research, education, or a public service program.
- (10) "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.
- (11)
 - (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;
 - (iv) a shortline freight railroad and ancillary facilities;
 - (v) a plant or facility for storing, distributing, or producing hydrogen, including the liquification of hydrogen, for use as a fuel in zero emission motor vehicles, for electricity generation, or for industrial use; or
 - (vi) a plant for the production of zero emission hydrogen fueled trucks.
 - (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 339, 2021 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 state treasurer or the state treasurer's designee;
 - (b) the chair of the Transportation Commission or the chair's designee;
 - (c) the executive director of the Governor's Office of Planning and Budget or the executive director's designee;
 - (d) a locally elected official who resides in Carbon, Emery, Grand, or San Juan County;
 - (e) a locally elected official who resides in Juab, Millard, Sanpete, Sevier, Piute, or Wayne County;
 - (f) a locally elected official who resides in Duchesne, Daggett, or Uintah County;
 - (g) a locally elected official who resides in Beaver, Iron, Washington, Garfield, or Kane County;

- (h) a locally elected official from the county that:
 - (i) produced the most mineral lease money related to oil extraction during the four-year period immediately preceding the term of appointment, as determined by the department at the end of each term; and
 - (ii) does not already have a representative on the impact board;
 - (i) a locally elected official from the county that:
 - (i) produced the most mineral lease money related to natural gas extraction during the four-year period immediately preceding the term of appointment, as determined by the department at the end of each term; and
 - (ii) does not already have a representative on the impact board;
 - (j) a locally elected official from the county that:
 - (i) produced the most mineral lease money related to coal extraction during the four-year period immediately preceding the term of appointment, as determined by the department at the end of each term; and
 - (ii) does not already have a representative on the impact board; and
 - (k) an individual who resides in a county of the third, fourth, fifth, or sixth class, appointed by the governor with the advice and consent of the Senate in accordance with Title 63G, Chapter 24, Part 2, Vacancies.
- (2)
- (a) The members specified under Subsections (1)(d) through (j) may not reside in the same county and shall be:
 - (i) nominated by the Board of Directors of the Southeastern Association of Local Governments, the Six County Association of Governments, the Uintah Basin Association of Governments, and the Five County Association of Governments, respectively, except that the members specified under Subsections (1)(h) through (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 advice and consent of the Senate in accordance with Title 63G, Chapter 24, Part 2, Vacancies.
 - (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) When the governor makes a new appointment or reappointment under Subsection (2)(b), or a vacancy appointment under Subsection (2)(d), the governor's new appointment, reappointment, or vacancy appointment shall be made with the advice and consent of the Senate in accordance with Title 63G, Chapter 24, Part 2, Vacancies.
- (4) The terms of office for the members specified under Subsections (1)(a) through (c) shall run concurrently with the term of office for the commission, department, or office from which each member comes.
- (5)
- (a) The member specified under Subsection (1)(k) is the chair of the impact board.
 - (b) The chair of the impact board is responsible for the call and conduct of meetings.
- (6) 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.
- (7) A member described in Subsections (1)(d) through (k) shall comply with the conflict of interest provisions described in Title 63G, Chapter 24, Part 3, Conflicts of Interest.
- (8)
- (a) A majority of the members of the impact board constitutes a quorum.
 - (b) Action by a majority vote of a quorum of the impact board constitutes action by the impact board.
- (9) The department shall provide staff support to the impact board.

Amended by Chapter 529, 2024 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 interest bearing loans to be paid back into the impact fund by the agency, subdivision, or interlocal agency.
- (3) The impact board may make a grant or loan under Subsection (1) regardless of whether the activity results in more than one impact or outcome, including an increase in natural resource development or an increase in economic development.
- (4) If the public service described in Subsection (1)(a) is a contract with a public postsecondary institution described in Subsection 35A-8-302(9)(b)(iii), the contract shall be:
- (a) based on an application to the impact board from the impacted county; and
 - (b) approved by the county legislative body.

Amended by Chapter 339, 2021 General Session

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 in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to perform the impact board's responsibilities under this part.

Amended by Chapter 89, 2019 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 or the increased 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) the subdivision's or interlocal agency's ability and willingness to sell bonds or other securities in the open market; and
 - (ii) the subdivision's or interlocal agency's 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 public 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 339, 2021 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 by statute;
 - (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.

Amended by Chapter 367, 2021 General Session

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

- (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 statute 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 agency created under Title 11, Chapter 13, Interlocal Cooperation Act;
- (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 agency's obligation to repay loans for extenuating circumstances.
- (4) To receive assistance under this section, a local political subdivision or an interlocal agency 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 agency 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 agency; 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 agencies that received assistance under this section.
- (8)
- (a) The first throughput infrastructure project considered by the impact board shall be a bulk commodities ocean terminal project.
 - (b) Upon receipt of an application from an interlocal agency created for the sole purpose of undertaking a throughput infrastructure project that is a bulk commodities ocean terminal project, the impact board shall:
 - (i) grant up to 2% of the money in the Throughput Infrastructure Fund to the interlocal agency to pay or reimburse costs incurred by the interlocal agency preliminary to its acquisition of the throughput infrastructure project; and

- (ii) fund the interlocal agency's application if the application meets all criteria established by the impact board.

Amended by Chapter 367, 2021 General Session

35A-8-310 Application -- Retroactivity.

- (1) The provisions of Laws of Utah 2021, Chapter 339, apply to any claim for which a court of competent jurisdiction has not issued a final unappealable judgment or order.
- (2) The Legislature finds that the provisions of Laws of Utah 2021, Chapter 339:
 - (a) do not enlarge, eliminate, or destroy vested rights; and
 - (b) clarify legislative intent.

Revisor instructions Chapter 339, 2021 General Session

Enacted by Chapter 339, 2021 General Session