

**ENERGY AND MINERAL IMPACT ASSISTANCE
PROGRAM GUIDELINES**

June 14, 2012



**STATE OF COLORADO
DEPARTMENT OF LOCAL AFFAIRS**
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Program guidelines and application form are available on the Department of Local Affairs web page at
www.dola.state.co.us/LGS/FA/emia.htm

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ENERGY AND MINERAL IMPACT ASSISTANCE PROGRAM

OVERVIEW

Colorado experiences the boom and bust cycles of the extraction industries. Energy and mineral production is subject to the fluctuations of an international marketplace. There is little local or state government can do to control the forces of an international economy.

Boom/bust cycles profoundly affect Colorado, particularly in rural and mountain communities near the geological resource deposits, although communities statewide are affected to some degree. Through most of the state's history until the mid-1970's, few attempts were made to moderate and assist these communities as they grew and declined with these cycles.

In 1977, the Energy and Mineral Impact Assistance program was created by the General Assembly to provide funds and technical assistance to these communities. Funds for the program were drawn from federal mineral lease royalties and the state severance tax. In the 1977 legislation creating the program, the General Assembly found that “when nonrenewable natural resources are removed from the earth, the value of such resources to the state of Colorado is irretrievably lost.” The legislature declared the severance tax is a means for the state “to recapture a portion of the lost wealth” and expressed its intent “a portion be made available to local governments to offset the impact created by nonrenewable resource development.” Both the mineral lease and severance tax statutes governing the Energy and Mineral Impact Assistance Program are broadly constructed, directing funds to areas socially or economically impacted, not necessarily to mitigating direct energy or mineral development impacts. The relative extent of impact from energy and mineral development, including bust conditions, is considered. The program maintains flexibility to respond to areas throughout the state.

Federal Mineral Lease Funds. Since the 1920s, the federal government has charged royalties on mineral production from federal lands. A portion of the revenues collected have been returned to the states, local governments and school districts from which the minerals were withdrawn. In 1977, the General Assembly enacted a new provision establishing 15% of these federal funds be deposited in a Local Government Mineral Impact Fund to be distributed by the Executive Director of the Department of Local Affairs to “state agencies, public schools and political subdivisions of the state” impacted by mineral and energy development “for planning, construction and maintenance of public facilities and for public services.” In 1982, the General Assembly called for additional federal mineral lease funds to be deposited in the Local Government Mineral Impact Fund. The statute states “priority shall be given to those public schools and political subdivisions socially or economically impacted by the development, processing or energy conversion of fuels and minerals leased under said federal mineral lands leasing act” (C.R.S. 34-63-102(1)(b)). With these funds being a federal royalty payment, many local governments have determined federal mineral lease funds are exempt from TABOR limitations.

State Severance Tax. In 1977, the General Assembly enacted legislation establishing a severance tax on certain minerals and mineral fuels. This legislation included provisions for deposit of a portion of tax revenues into the Local Government Severance Tax Fund, to be distributed by the Executive Director of the Department of Local Affairs. According to the statute, “funds from the Local Government Severance Tax Fund shall be distributed to those political subdivisions socially or economically impacted” by the development, processing, or energy conversion of minerals and mineral fuels subject to severance taxation. Such funds shall be “used for the planning, construction, and maintenance of public facilities and for the provision of public services” (C.R.S. 39-29-101 through 39-29-114).

Integrated Administration. For the convenience of local governments and to minimize administrative overhead expenses, operations of the mineral lease and severance tax local government impact assistance programs have been combined into one integrated program, the Energy and Mineral Impact Assistance program. There are three aspects to the overall program:

- < Discretionary Grants and loans;
- < Direct distributions; and
- < Severance tax credits.

DISCRETIONARY GRANTS AND LOANS

The largest distribution of funds from the Energy and Mineral Impact Assistance Program occurs in the form of discretionary grants and loans.

Technical Assistance to Prospective Applicants. Application forms and technical assistance are available from department regional managers in Loveland, Fort Morgan, Pueblo, Alamosa, Durango, Grand Junction, Frisco and Golden. The application form and program guidelines are also available on the Department of Local Affairs website, www.dola.state.co.us/LGS/FA/emia.htm.

Eligible Recipients. By statute, eligible recipients are “political subdivisions socially or economically impacted by the development, processing or energy conversion of fuels and minerals”. Political subdivisions include municipalities, counties, school districts and most special districts.

State agencies are also eligible recipients (of federal mineral lease funds) provided they have specific spending authority from the General Assembly. (See “State Agency Guidelines” on page 5.)

If eligible local government recipients choose to provide a public service through a non-profit corporation, the local government must assume responsibility for the administration of any funds awarded. The local government will be required to own any real and/or tangible assets acquired with the funds awarded for ten years.

Eligible Activities. By statute, eligible activities consist of the “planning, construction and maintenance of public facilities” and “the provision of public services.” Examples of public facilities include water and sewer infrastructure, town/city halls, county courthouses, community

centers, public roads, and emergency medical and fire protection facilities and equipment. Examples of public services include community development assistance to local governments, internship programs and community revitalization assistance.

Types of Financial Assistance Available. Generally, financial assistance for public facilities and services is provided in the form of a grant. Beginning in July, 2008, the grant program was redesigned to include a three tiered approach based on size of grant request.

Tier I includes grant awards of up to \$200,000. Tier II includes grant awards greater than \$200,000 up to \$1,000,000. The applications for grant awards in Tier I are reviewed by staff. The applications for grant awards in Tier II are reviewed by the Energy Impact Advisory Committee. The Executive Director will make funding decisions as funds are available three times per year for Tiers I and II. Tier III criteria are in the development stage and are planned to go into effect when sufficient revenues become available. It is anticipated that grant requests in this tier will be in the \$1,000,000 to \$10,000,000 range and will be made once yearly. It is anticipated that to be competitive for a Tier III grant, applications will require multi-jurisdictional collaboration requesting assistance to solve a multi-jurisdictional problem.

Energy impact fund receipts are volatile and follow the ups and downs of the industry's development and production cycles. Due to this fluctuation, local government expectations may sometimes exceed the program's revenue stream and capability to fund projects even though project selection criteria are met. In order to manage expectations and remain in a position to help the greatest number of energy impacted applicants, funding amounts for each of the tiers may be adjusted periodically as demand and revenue capability change. Any adjustments to the tier funding thresholds will be appropriately noticed on the department's web site and through information publications and web sites of associations representing local government clients: the Colorado Municipal League, Colorado Counties, Inc. and the Colorado Special District Association.

The department is also authorized to provide assistance in the form of loans for "domestic wastewater treatment works" and "potable water treatment facilities." (More information on loans is provided on page 4 under "Water and Sewer Loans.")

Application Deadlines. Application deadlines are announced annually with the Availability of Funds. Generally, applications are accepted continuously and are considered in the course of three regular funding cycles each year with application deadlines for those cycles occurring April 1, August 1, and December 1. Should sufficient funds not be available for all three cycles, a funding cycle may be eliminated. The application deadline for each funding cycle is announced through the Colorado Municipal League, Colorado Counties, Inc., and the Special District Association and is also posted on the Department of Local Affairs website at www.dola.colorado.gov/impact. The department requires that applications be submitted electronically, unless extenuating circumstances require other arrangements.

Funding Availability. At the beginning of each fiscal year, the department will announce the amount of funds available for each cycle and tier and the planned number of cycles. Any funds remaining after Tier I awards are made will be made available to that cycle's Tier II applicants.

Project Selection Criteria. The department and state advisory committee in reviewing, evaluating and making funding decisions use the following criteria or guidelines:

- a) **Energy/Mineral Relationship:** The degree to which the applicant is socially or economically impacted by the development, processing or energy conversion of fuels and minerals. This includes **current** energy and mineral impacts as determined by metrics (energy worker residency, permits issued and mineral production levels) as well as documentation of **historical** impacts that continue to affect the applicant in a negative manner or **impending** impacts that will potentially affect the applicant negatively in the future.
- b) **Demonstration of Need:** The problem is clearly identified and quantifiable need is adequately described and documented.
- c) **Readiness to Go:** The project can be implemented in a reasonable period of time, i.e., within 6 months following grant award. Funding sources beyond the Impact Assistance grant are pledged and ready for expenditure. The applicant has demonstrated through past performance that it possesses the appropriate professional and technical capacity to initiate and complete the project successfully and within the planned implementation schedule. Preliminary engineering has been completed and plans and permits are approved and the plan is ready for bid.
- d) **Local Commitment:** The amount of local government cash contribution and/or revenue generated from debt financing is of primary importance in demonstrating the importance of the project to the applicant. Secondly, the amount of funding firmly committed from sources other than local government cash match such as in-kind contributions (i.e. the value of local government labor and equipment dedicated for use in the project), state and federal grants, private foundation and industry financial support is also considered. While dollar-for-dollar cash match from the local government applicant is strongly encouraged to improve the application's competitiveness, the minimum local match requirement (which can be composed of local government cash and other sources described above) is twenty-five percent of the total project cost. If a twenty-five percent match can not be committed, the applicant must provide appropriate documentation and justification for its current fiscal constraints which limit the ability to meet the program's minimum matching requirements.
- e) **Ability to Pay:** A review and analysis of the local government's financial status including general and enterprise fund balances, the rates charged for services such as utilities, property tax mill levies, retail sales tax rate and existing debt loads as compared to local government units in the state with similar characteristics (e.g. local government type, population, and geographic region of the state) to determine a local government's ability to show it is providing everything it can to help fund the project.
- f) **Measurable Outcomes:** The degree to which the project provides services that benefit the entire community instead of a relatively small segment of residents and improves the

quality of life in the community in a measurable fashion. Examples of measurable quality of life improvements include: (1) construction of a medical clinic that enhances the health and well-being of the 800 residents who will be served in an area which currently lacks health care providers; (2) county road realignment work resulting in traffic accident rates being lowered; (3) construction of an addition to a community center that provides space for 40 children from energy industry worker families and the community as a whole; (4) replacement of antiquated water mains eliminating or minimizing annual maintenance and operational costs that can be quantified; and (5) energy efficient town hall. If the project is conducive to partnering with other entities to deliver services in a more cost effective manner over a larger service area, the applicant has successfully reached-out to be inclusive with other units of government to participate or has justified why a multi-jurisdictional approach is not feasible.

- g) **Relationship to Community Goals:** The project addresses an identified community need or problem and is specified in documents such as a capital improvement plan, community master plan, engineering report, annual budget and/or other similar planning and development resource publications adopted or otherwise approved by the local governing body. The applicant has adequately compiled and reviewed the goals of the community at-large and has identified the project as a highly ranked need against other initiatives.

Water and Sewer Loans. Senate Bill 35 (C.R.S. 39-29-110) was passed during the 1985 state legislative session and allows Energy and Mineral Impact funds to be distributed to political subdivisions of the state on a loan or combination loan and grant basis for “domestic wastewater treatment works” and “potable water treatment facilities.” Eligible activities under the loan provisions of the law are limited to “planning, design, construction, erection, building, acquisition, alteration, modernization, reconstruction, improvement, or expansion” of such facilities.

The law further defines “domestic wastewater treatment works” as “a system or facility...for treating, neutralizing, stabilizing, collecting, or disposing of domestic wastewater.” The statute requires the system or facility to have a design capacity to receive more than 2,000 gallons of wastewater per day. Improvements to treatment works can include appurtenances to the system or facility, “such as outfall sewers, pumping stations, collection and interceptor sewers and the equipment related to such appurtenances.”

The statutory definition of “potable water treatment facilities” is “a system or facility...for treating water to be supplied to the public for domestic use.” Improvements to treatment facilities can include “water treatment plants, treated water storage facilities, water mains, distribution lines, pumps and appurtenances.”

Guidelines for funding distribution under the Water and Sewer Loan program are:

- a. By statute, the minimum interest rate is 5 percent. The loan term will generally not exceed 20 years. Payments are scheduled on an annual basis, with a principal and interest payment due September 1.
- b. Loans will be authorized for only those parts of a domestic water or sewer system

specified in C.R.S. 39-29-110(1)(b)(II). Raw water storage or transmission to a treatment facility cannot be considered for loans.

- c. Water and sewer loans generally will be the first option considered for projects related to deferred maintenance and for applicants who possess capacity to incur additional debt.
- d. The staff will identify for the Energy Impact Advisory committee those applicants capable of supporting a loan obligation as a reasonable alternative to providing full funding of a grant application.
- e. Loan participation may be used as a means to increase local match for a project when local cash committed is minimal.
- f. Refinancing of existing debt obligations is not eligible.
- g. Loan authority should not deter communities from using conventional funding sources and other more traditional state and federal grant and loan programs.
- h. The department will perform a community fiscal analysis to determine the local government's ability to repay the loan. The analysis will include a review of user rates, tap fees, overall community tax burden and fee structures, population statistics, existing debt service, financial statements, fund balances and anticipated capital improvements.

State Agency Guidelines. State agencies are eligible to apply for and receive assistance from that portion of the Energy and Mineral Impact Fund derived from Federal Mineral Leasing revenues. Pursuant to C.R.S. 34-63-102(7), state agencies must have legislative spending authority if a Federal Mineral Leasing Fund grant application is successful. However, under C.R.S. 34-63-102(7)(b), state-supported institutions of higher education that provide job training or facilities related to energy development for counties or communities with energy impacts may expend moneys from the Local Government Mineral Impact Cash Fund without separate legislative authority.

State agency requests are expected to have the support of benefiting local governments and to meet one or more of the following conditions:

- The project is related to addressing the adverse impacts of energy and mineral development at the local, regional or statewide level;
- The state role is coordination of efforts related to the planning or implementation of mitigation activities to relieve the adverse impacts of energy/mineral development;
- Communities have identified the need for state involvement in the solution of local problems that may extend beyond municipal, county or regional jurisdictional boundaries.

- The project must have a direct benefit or service to local governments.

Local Review. The Energy and Mineral Impact Assistance Program, by design, places the emphasis for problem identification and response on local government decision-makers. With the number of applications and the amount of funds requested often exceeding the funding capacity of the program, a local ranking or prioritization is required if a single jurisdiction submits more than one application in the same funding cycle.

The department may request state and regional applications be prioritized against other applications submitted from a benefiting jurisdiction.

State Staff Review. Upon receipt of an application, a specific department staff member is assigned to be the primary contact for the review period. This is usually the department's regional manager for the area. Prior to the state Energy and Mineral Impact Assistance Advisory Committee review of the funding request, program staff meet with the applicant, review the application and the project, and prepare a project summary sheet which describes the project, presents a budget and provides an analysis of the project with positive and negative comments based on program criteria. Applicants receive a copy of this project summary before the state committee meeting to review funding requests.

State Advisory Committee Review. The state Energy and Mineral Impact Assistance Advisory Committee reviews applications for Tiers II and, if applicable, Tier III in a public meeting. At the state committee's application review meetings, current applicants have the opportunity to present their application, respond to the project summary statements, and answer questions from the committee. Following the presentation, the committee makes its recommendation to the executive director of the department, who makes the final funding decision.

It should be understood the committee is an advisory body. While the executive director gives committee recommendations careful consideration, the applicant should not assume a grant or loan is awarded or denied solely on the basis of the committee's recommendation.

By statute the committee consists of:

- Executive Director, Colorado Department of Local Affairs (Chair)
- Colorado Commissioner of Education
- Executive Director, Colorado Department of Transportation
- Executive Director, Colorado Department of Natural Resources
- Executive Director, Colorado Department of Public Health and Environment
- Seven residents of areas impacted by energy conversion or mineral resource development.

The residents of impacted areas are appointed and serve at the pleasure of the Governor for terms not exceeding four years. Members are eligible for reappointment. State department directors serving on the committee may designate agency representatives to act in their place.

Funding Decision. Following the meeting of the state advisory committee or the administrative review, the executive director advises each applicant of his/her decision to award or deny grant or loan funding via letter to the chief elected official of the applicant jurisdiction.

Decision letters are usually mailed within fourteen to thirty days after the state advisory committee meeting. A letter from the executive director announcing a decision to provide project funding is not a formal obligation of funds by the State, but rather an offer to enter into a grant contract for the amount and project specified. The award offer is valid for one year. Projects not getting under contract within the year term must formally request an extension of the award offer with a valid reason for extension. If not approved, the offer is withdrawn. Conditions, such as formation of a taxing district, increased local financing share or development of necessary plans, may be stated in the letter. Such conditions must be met either prior to or during the time of performance of the project at the discretion of the department.

Funding Assistance through Administrative Review. In certain instances, administrative reviews may be carried out in lieu of the formal advisory committee review. Administrative reviews resulting in a funding award may be considered for: (a) those projects requiring a supplemental grant to continue a project previously reviewed by the committee and where no substantive problems or changes in the project have occurred; (b) when a delay in a funding decision may cause undue financial hardship on an applicant, jeopardize leveraging of other funds or otherwise cause an opportunity to be missed; (c) in the event of an emergency that overwhelms the local government's financial capability to respond and recover from the incident without state funding assistance; or (d) preliminary design, engineering or feasibility studies as long as the total request doesn't exceed \$25,000 with a minimum match of 50%.

Contracting. The offer to contract is generally held open for a maximum of twelve months. If the project cannot proceed within that timeframe, the offer to contract will expire unless authorization to extend the offer is provided.

Following receipt of an award letter, department staff and the recipient jurisdiction negotiate a draft contract. In some rare cases, the contract may be sent to the Attorney General's Office for review and comment. After any necessary revision and approval by all parties, the final contract copies are routed for signature, starting with the local government grantee. The contract is then routed to the executive director of the department. The grantee will receive a copy of the contract when it has been fully executed. The contracting procedure generally takes from ten to thirty days from the time the final contract is sent by the grantee to the department's office in Denver. **LOAN/GRANT RECIPIENTS SHOULD NOT ENCUMBER OR EXPEND ANY GRANT OR LOAN FUNDS BEFORE THEY RECEIVE A FULLY EXECUTED CONTRACT FROM THE DEPARTMENT.** Expenses incurred prior to the execution date of a contract are the obligation of the grantee and cannot be reimbursed by the state.

The provisions of the contract generally include the following:

1. **Scope of Project.** Each contract contains a "Scope of Project," which describes the project to be performed using Energy/Mineral Impact funds. This narrative explains the project, payment process, performance schedule and other operational details.
2. **Monitoring.** During the course of the contract, a specific department staff member will periodically review project progress. The assigned staff will be the grantee's primary contact with the department for the duration of the project and will be responsible for

review of reports and payment requests as specified in the grant contract. Specific details as to the frequency and form of monitoring will vary depending upon the nature and scope of the project. In some cases, other state agencies will assist the department with technical monitoring of projects.

3. Payment Schedule. Upon receipt of proper documentation and approval of actual expenditures made during the course of a project, interim payments are issued reimbursing the grantee for eligible expenses incurred. The payment schedule and required performance review is specified in the contract. The grantee initiates the request by submitting documentation of expenditures and a project status report with a description of work completed to date to the assigned state staff monitor. Upon review/approval of the request, the project monitor requests an interim payment be issued to the grantee. It generally takes ten to thirty days from the time a request for payment is received by staff for a payment to be issued.

The state retains a specified amount of the grant funds until such time as the project is completed and the grantee has fulfilled all obligations under the contract. The retainage is released upon project completion and receipt and approval of the final project report. Grantees should plan on covering the final project costs with local funds pending release of the state retainage.

4. Amending a Contract. In the event revision of an existing contract is necessary, the grantee should immediately contact the division staff member responsible for the project. The grantee will be asked to submit a written request justifying an amendment and specifying the desired changes. A staff review of the request will be conducted prior to a contract amendment being prepared. If the amendment requires a change in scope, the director of the Division of Local Government will make the decision to either accept or reject, and a letter will be sent to the local government prior to contract amendment.
5. Supplemental Funding. Supplemental requests for funding will be considered on a case by case basis. To request supplemental funding, a grantee must submit a written request, including the amount being requested, a justification for the request and a revised budget for the project to include the additional funds. It is expected the grantee will provide a dollar for dollar cash match. If a dollar for dollar match is not possible, the grantee must state in the written request the reason. The grantee cannot expend any supplemental funds until approved by the executive director and a contract amendment is fully executed.
6. Closeout. Final requests for payment are due within 90 days of expiration of the contract.

Policy for Emergency Awards from Energy and Mineral Impact Funds

The purpose of the Emergency Fund is to reserve \$6 million in energy and mineral impact funds to assist local governments to recover from a disaster or an emergency. These dollars shall be \$3 million from Federal Mineral Lease and \$3 million from Severance Tax Revenue. To qualify, emergencies affecting a local government and community must show a financial crisis

constituting a threat to public health, safety or welfare.

Between FY-2007-2010, Colorado communities have experienced disasters ranging from the tornado in Windsor and the Salmonella contamination in Alamosa. Each of these resulted in a threat to health and public safety and the Governor declared a state disaster. Other more local emergencies (not Governor declared) sometimes require assistance, such as local flood damage to a water system.

In order to obtain funding, a local government would need to submit a request in writing to the department that explains one or more the items below:

- a. significant negative impact on public health, safety and/or welfare;
- b. a description of the condition encountered resulting from the disaster, and number of people affected;
- c. the request is made due to unforeseen or unanticipated circumstances;
- d. the need for funding is time-sensitive and/or an opportunity to mitigate will be missed, not merely delayed, without emergency funding;
- e. local resources to address the situation have been exhausted;
- f. a Governor or locally declared disaster has been designated.

If approved, funding will provided only up to the amount necessary to address the immediate threat or alleviate the immediate crisis and allow the local government time to access other funding sources.

DIRECT DISTRIBUTIONS

The Colorado Department of Local Affairs (DOLA) distributes revenue derived from energy and mineral extraction statewide. These revenues come from State Severance Tax receipts and Federal Mineral Lease non-bonus payments.

By statute, C.R.S. 39-29-110 (1)(c), requires thirty percent of the revenues from the Local Government Severance Tax Fund to be annually distributed directly to municipalities and counties. Fifty percent of the funds deposited in the Local Government Mineral Impact Fund are to be annually distributed directly back to the counties and municipalities per C.R.S. 34-63-102 (3).

Pursuant to statute, employee residence reports, mining and well permits, mineral production, population and road miles are the metrics on which to calculate the Local Government Severance Tax Fund and Local Government Mineral Impact Fund direct distribution payments.

For additional information regarding Federal Mineral Lease and State Severance tax direct distributions, go to <http://www.dola.state.co.us/dlg/fa/eiaf/distributions.html>.

SEVERANCE TAX CREDITS

State statute C.R.S. 39-29-107.5 allows for contributions to be made by severance taxing corporations for local public facility and service projects to be converted into a severance tax credit on new or increased energy/mineral production. These contributions are intended for use in addressing front-end impacts associated with new or expanding production.

In order to create such a credit, the severance taxpayer and local government form an agreement for the contribution and submit it to the Department of Local Affairs for review by the state Energy and Mineral Impact Advisory Committee and an approval/denial decision by the executive director of the department. The agreement must specify the following six items:

1. The taxpayer from which the contribution is being made and credit claimed.
2. The local jurisdiction to which the contribution is being made.
3. The need for such contribution relative to impacts from a new or expanding mineral operation.
4. The nature of the contribution in the form of a specific description of the quantities, term, and conditions which make up the contribution and procedures for conveyance. This may include cash transfers, properly valued materials and services, and losses from the purchase of public bonds issued by the jurisdictions.
5. The purpose of the contribution in the form of a description of the relationship of the contribution to need and its role in local government planning and mitigation programs.
6. The amount of the contribution as determined by fair market value of the contributed property and/or services at the time of the execution of the agreement.

The criteria for review of agreements by the state advisory committee and executive director are similar to the funding guidelines used for the grant and loan program described above except that there is a greater emphasis on the need for front end financing before the new/expanded ad valorem tax base is established.

Credit agreements must be reviewed and prioritized locally with other credit agreements and grant/loan requests submitted during a grant review cycle. If approved, the contribution agreement is sent to the State Department of Revenue as documentation for future credit claims by the corporation. Municipalities, counties, school districts and other special districts may use such a credit agreement to obtain industry contributions. More complete written information on the severance tax credit is available upon request. Local units of government considering this mechanism are encouraged to contact their Division of Local Government regional manager to discuss procedure and technical requirements.