

HOUSE BILL NO. HB0151

Economic development large project loans-amendments.

Sponsored by: Representative(s) Greear

A BILL

for

1 AN ACT relating to economic development; codifying and
2 amending procedures for loans for economic development
3 projects as specified; amending and specifying duties
4 associated with the large project loan program;
5 establishing a loan review committee; requiring a report;
6 making conforming amendments; repealing noncodified
7 provisions of the loan program; requiring rulemaking;
8 specifying applicability; and providing for effective
9 dates.

10

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

12

13 **Section 1.** W.S. 9-12-308 is created to read:

14

15 **9-12-308. Large project loan program.**

16

1 (a) The large project account within the revolving
2 investment fund created pursuant to article 16, section 12
3 of the Wyoming constitution, created by 2014 Wyoming
4 session laws, chapter 46, section 2, is continued and
5 codified.

6
7 (b) Funds in the large project account within the
8 revolving investment fund shall be used exclusively to
9 promote and aid economic development of the state by
10 providing loan guarantees or loans to proposed or existing
11 enterprises that will employ people within the state,
12 provide services in the state, use resources in the state
13 or otherwise add economic value to goods, services or
14 resources within the state consistent with this section.

15
16 (c) There is created a loan review committee to
17 review all projects, loans and loan guarantees proposed
18 under this section. The committee shall consist of:

19
20 (i) The governor or his designee;

21
22 (ii) The treasurer or his designee;

23

1 (iii) A member of the board of directors of the
2 council who has expertise in banking or experience in the
3 banking industry, designated by the chief executive officer
4 of the council.

5
6 (d) The members of the loan review committee may
7 request assistance from staff of the governor's office, the
8 state treasurer's office, the council and any bank
9 participating in the loan transaction or loan guarantee to
10 review and evaluate proposed projects, loans and loan
11 guarantees under this section.

12
13 (e) Loans and loan guarantees provided under this
14 section shall be subject to the following procedures:

15
16 (i) Any project shall first be submitted to and
17 reviewed by the council who shall provide preliminary
18 recommendations for the size and parameters of the proposed
19 loan or loan guarantee. For any loan or loan guarantee made
20 by any nonpublic lender the council shall provide
21 electronic notice to all Wyoming financial institutions of
22 the potential loan terms and shall allow not less than
23 fifteen (15) business days for Wyoming financial

1 institutions to respond with expressions of interest with
2 proposed terms. All offers of proposed terms shall be
3 provided to the council, the loan review committee and the
4 person seeking the loan for consideration. All information
5 sent by electronic notice shall be treated in accordance
6 with applicable confidentiality requirements. As used in
7 this section, "Wyoming financial institution" means as
8 defined in W.S. 13-1-501(a)(i). The council shall review
9 the project under the process set forth in W.S. 9-12-601
10 through 9-12-603. In developing recommendations for the
11 size and parameters of the proposed loan or loan guarantee
12 under this paragraph, the council may work with the bank
13 that would issue the loan or loan guarantee;

14

15 (ii) The council shall present the project and
16 the proposed loan or loan guarantee and its terms to the
17 loan review committee, which may accept or deny the
18 proposed loan or amend its terms;

19

20 (iii) Upon a favorable recommendation by the
21 council and the loan review committee, the project shall
22 then be submitted to the state loan and investment board
23 for final approval. The council and the loan review

1 committee shall only forward projects and proposed loans
2 under this section that have been determined to meet the
3 requirements of this section;

4

5 (iv) The state loan and investment board shall
6 vote to accept or deny the project and the terms of the
7 loan or loan guarantee developed for the project.

8

9 (f) The council and the loan review committee shall
10 recommend, and the state loan and investment board shall
11 only approve, the issuance of loan guarantees and loans
12 under this section for projects that meet the following
13 requirements:

14

15 (i) Are anticipated to have an economic impact
16 and a public benefit greater than the economic impact and
17 public benefit of projects regularly funded under the
18 Wyoming business ready community program;

19

20 (ii) Based upon the findings of an independent
21 third party selected and approved by the council, will
22 provide the following minimum public benefits:

23

1 (A) The creation of a significant expansion
2 of permanent jobs in the county or counties in which the
3 project will be located;

4

5 (B) A significant increase in the assessed
6 valuation of the county or counties in which the project
7 will be located, by not less than the value of the loans or
8 loan guarantees received by the applicant borrower;

9

10 (C) A substantial increase in the sales,
11 property or other tax revenues to the county or counties
12 where the project will be located; and

13

14 (D) Promotion of a stable, balanced and
15 diversified economy.

16

17 (iii) Has a high likelihood of completion.

18

19 (g) The council shall establish the terms of any
20 loan, loan participation or loan guarantee issued under
21 this section in accordance with the following:

22

1 (i) Loans or loan guarantees provided under this
2 section shall be adequately collateralized. To protect the
3 state's interest, the council may negotiate protections
4 with respect to any accepted collateral, including but not
5 limited to escrow accounts, debt limitations, cash sweeps,
6 pledge rights, corporate approval rights and other
7 mechanisms the council deems appropriate;

8

9 (ii) Loans under this section shall bear
10 interest at a fixed or adjustable rate. The interest rate
11 shall be:

12

13 (A) Indexed to a rate as determined by rule
14 adopted by the council, plus any additional premium
15 determined by the council to be reasonably commensurate
16 with the risk profile of the loan or loan guarantee, as
17 approved by the loan committee; and

18

19 (B) Approved by the loan committee and the
20 state loan and investment board.

21

22 (iii) The council shall ensure through
23 certification of the applicant, or any other manner

1 determined to be adequate by the council, a commitment of
2 at least twenty-five percent (25%) of the total cost of the
3 project from funding sources not provided by the state of
4 Wyoming with at least ten percent (10%) of that funding
5 being provided directly by the applicant or the person on
6 whose behalf the applicant is authorized to act;

7

8 (iv) Loans or loan guarantees shall be used for
9 direct investment in the project and shall not be used or
10 made available to refinance preexisting debt incurred
11 before commencement of the project;

12

13 (v) Borrowers shall demonstrate a balance sheet
14 and cash flow sufficient to demonstrate their ability to
15 repay the loan or loan guarantee;

16

17 (vi) Borrowers shall provide security to repay
18 the loan with a residual value sufficient to repay the loan
19 or loan guarantee in event of default;

20

21 (vii) When appropriate, the council may require
22 continuing loan guarantees by affiliates and principals of
23 the borrower;

1

2 (viii) Except as provided in this paragraph, the
3 council shall ensure that the lead lender secures a first
4 security interest in the entire project sufficient to
5 adequately protect the investment of loan proceeds or
6 proceeds guaranteed by the state under this section. The
7 security interest shall be shared pro rata with the state
8 in percentage of the loan or loan guarantee. If necessary,
9 the council may allow the lead lender to accept substitute
10 security that will protect repayment to the state on a
11 basis substantially equivalent to a first security interest
12 on the project. The council shall ensure that any alternate
13 security is sufficient to prudently protect the state's pro
14 rata interest;

15

16 (ix) The council shall charge a loan origination
17 fee or loan guarantee fee of one percent (1%) of the total
18 loan or guaranteed loan amount. Funds collected under this
19 paragraph shall be deposited in the large project account
20 within the revolving investment fund, less any amounts used
21 to pay the costs of consultants retained pursuant to
22 subsection (k) of this section.

23

1 (h) No loan or loan guarantee shall be made under
2 this section without the written opinion of the attorney
3 general certifying the legality of the transaction and all
4 documents connected therewith.

5

6 (j) Repayment of principal and interest to the state
7 in connection with loans made under this section shall be
8 deposited to the large project account within the revolving
9 investment fund. All funds within the account may be used
10 for and are continuously appropriated for the purposes of
11 this section. The total principal balance of outstanding
12 loans under this section shall not exceed the amounts
13 appropriated by the legislature plus interest accrued and
14 collected less any losses of loan principal.

15

16 (k) The council is authorized to retain experts and
17 service providers as necessary to fully evaluate, negotiate
18 and implement the terms and conditions of the loans and
19 loan guarantees issued under this section. If an expert or
20 service provider is retained by the council under this
21 subsection, any costs incurred that exceed the loan
22 origination fee or loan guarantee fee set in paragraph
23 (g)(ix) of this section shall be paid by the applicant. The

1 independent third party selected and approved by the
2 council under paragraph (f)(ii) of this section shall not
3 serve as an expert or service provider retained under this
4 subsection.

5

6 (m) The council shall promulgate rules necessary for
7 the implementation of this section.

8

9 **Section 2.** W.S. 9-12-305 and 9-12-306(b) are amended
10 to read:

11

12 **9-12-305. Economic development enterprise fund**
13 **account; deposits; continuous appropriation; loans.**

14

15 Except for fees deposited in accordance with W.S.
16 9-12-302(b), all repayments of principal and interest to
17 the state in connection with loans made under this article
18 and other funds as appropriated by the legislature for the
19 challenge loan program shall be deposited into the economic
20 development enterprise account within the revolving
21 investment fund. All funds in the account may be used for
22 and are continuously appropriated for loans authorized to
23 be made under this article. Funds within the account may

1 also be transferred upon direction of the governor to the
2 large project account within the revolving investment fund
3 ~~created by 2014 Wyoming Session Laws, Chapter 46~~ if
4 required to meet loans or loan guarantees approved ~~by the~~
5 ~~state loan and investment board~~ under ~~that law~~ W.S.
6 9-12-308. The total principal balance of outstanding loans
7 shall not exceed the amounts appropriated by the
8 legislature plus interest accrued and collected less any
9 losses of loan principal or interest.

10

11 **9-12-306. Audit; report.**

12

13 (b) On or before July 15 of each year, the council
14 shall submit a written report to the joint minerals,
15 business and economic development interim committee
16 reviewing rules adopted by the council during the reporting
17 period, presenting a portfolio of loans made under the
18 program and under W.S. 9-12-308 showing the number of jobs
19 created as a result of loans in the portfolio including
20 whether the jobs are permanent or temporary and presenting
21 a risk analysis of the portfolio of loans prepared by the
22 state banking commissioner. The report, portfolio of loans
23 and risk analysis required under this subsection shall be

1 public records. The risk analysis prepared by the state
2 banking commissioner shall not be subject to the
3 limitations of W.S. 9-1-512.

4

5 **Section 3.** 2014 Wyoming Session Laws, Chapter 46,
6 Section 2, 2016 Wyoming Session Laws, Chapter 41, Sections
7 3 and 5 and 2018 Wyoming Session Laws, Chapter 98, Sections
8 1 and 2 are repealed.

9

10 **Section 4.** Nothing in this act shall be construed to
11 modify or impair existing contracts or loans of the state
12 of Wyoming executed before July 1, 2020.

13

14 **Section 5.** The Wyoming business council shall
15 promulgate rules necessary to implement the provisions of
16 this act.

17

18 **Section 6.**

19

20 (a) Except as provided in subsection (b) of this
21 section, this act is effective July 1, 2020.

22

1 (b) Sections 5 and 6 of this act are effective
2 immediately upon completion of all acts necessary for a
3 bill to become law as provided by Article 4, Section 8 of
4 the Wyoming Constitution.

5

6

(END)