

ENROLLED ACT NO. 76, HOUSE OF REPRESENTATIVES

SIXTY-FIFTH LEGISLATURE OF THE STATE OF WYOMING
2020 BUDGET SESSION

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

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

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

9-12-308. Large project loan program.

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

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

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

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- (i) The governor or his designee;
- (ii) The treasurer or his designee;
- (iii) A member of the board of directors of the council who has expertise in banking or experience in the banking industry, designated by the chief executive officer of the council.

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

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

(i) Any project shall first be submitted to and reviewed by the council who shall provide preliminary recommendations for the size and parameters of the proposed loan or loan guarantee. For any loan or loan guarantee made by any nonpublic lender the council shall provide electronic notice to all Wyoming financial institutions of the potential loan terms and shall allow not less than fifteen (15) business days for Wyoming financial institutions to respond with expressions of interest with proposed terms. All offers of proposed terms shall be provided to the council, the loan review committee and the person seeking the loan for consideration. All information sent by electronic notice shall be treated in accordance with applicable confidentiality requirements. As used in this paragraph, "Wyoming financial institution" means as defined in W.S. 13-1-501(a)(i). The council shall review

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the project under the process set forth in W.S. 9-12-601 through 9-12-603. In developing recommendations for the size and parameters of the proposed loan or loan guarantee under this paragraph, the council may work with the bank that would issue the loan or loan guarantee;

(ii) The council shall require all persons seeking a loan to disclose and certify, under penalty of perjury, whether the person holds a position with or has any present, direct business connection to any state, county or municipal officer, employee or instrumentality or has any familial relationship as spouse, child, sibling or parent residing as a member of the same household in the principal place of residence of any state, county or municipal officer or employee. As used in this paragraph, "direct business connection" includes employer-employee and coprincipal relationships. Information disclosed under this paragraph shall not be the determining factor in the selection process;

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

(iv) Upon a favorable recommendation by the council and the loan review committee, the project shall then be submitted to the state loan and investment board for final approval. The council and the loan review committee shall only forward projects and proposed loans under this section that have been determined to meet the requirements of this section;

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

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

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

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

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

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

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

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

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(iii) Has a high likelihood of completion.

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

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

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

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

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

(iii) The council shall ensure through certification of the applicant, or any other manner determined to be adequate by the council, a commitment of at least twenty-five percent (25%) of the total cost of the project from funding sources not provided by the state of Wyoming;

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

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

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

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

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

(ix) The council shall charge a loan origination fee or loan guarantee fee of one percent (1%) of the total loan or guaranteed loan amount. Funds collected under this paragraph shall be deposited in the large project account

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within the revolving investment fund, less any amounts used to pay the costs of consultants retained pursuant to subsection (k) of this section.

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

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

(k) The council is authorized to retain experts and service providers as necessary to fully evaluate, negotiate and implement the terms and conditions of the loans and loan guarantees issued under this section. If an expert or service provider is retained by the council under this subsection, any costs incurred that exceed the loan origination fee or loan guarantee fee set in paragraph (g)(ix) of this section shall be paid by the applicant. The independent third party selected and approved by the council under paragraph (f)(ii) of this section shall not serve as an expert or service provider retained under this subsection.

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

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

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

Except for fees deposited in accordance with W.S. 9-12-302(b), all repayments of principal and interest to the state in connection with loans made under this article and other funds as appropriated by the legislature for the challenge loan program shall be deposited into the economic development enterprise account within the revolving investment fund. All funds in the account may be used for and are continuously appropriated for loans authorized to be made under this article. Funds within the account may also be transferred upon direction of the governor to the large project account within the revolving investment fund ~~created by 2014 Wyoming Session Laws, Chapter 46~~ if required to meet loans or loan guarantees approved ~~by the state loan and investment board~~ under ~~that law~~ W.S. 9-12-308. The total principal balance of outstanding loans shall not exceed the amounts appropriated by the legislature plus interest accrued and collected less any losses of loan principal or interest.

9-12-306. Audit; report.

(b) On or before July 15 of each year, the council shall submit a written report to the joint minerals, business and economic development interim committee reviewing rules adopted by the council during the reporting period, presenting a portfolio of loans made under the program and under W.S. 9-12-308 showing the number of jobs created as a result of loans in the portfolio including whether the jobs are permanent or temporary and presenting

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a risk analysis of the portfolio of loans prepared by the state banking commissioner. The report, portfolio of loans and risk analysis required under this subsection shall be public records. The risk analysis prepared by the state banking commissioner shall not be subject to the limitations of W.S. 9-1-512.

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

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

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

Section 6.

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

ORIGINAL HOUSE
BILL NO. HB0151

ENGROSSED

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

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the House.

Chief Clerk