

**DRAFT ONLY  
NOT APPROVED FOR  
INTRODUCTION**

HOUSE BILL NO. [BILL NUMBER]

COVID-19 business relief programs.

Sponsored by: Joint Minerals, Business & Economic  
Development Interim Committee

A BILL

for

1 AN ACT relating to the emergency expenses of government;  
2 providing legislative findings; authorizing emergency  
3 governmental programs related to economic development and  
4 business relief as specified; providing appropriations;  
5 providing a sunset date for created emergency programs; and  
6 providing for an effective date.

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

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**STAFF COMMENT**

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**The Committee should note that the programs created by this  
act may implicate a number of provisions of the Wyoming**

1 Constitution. Because of the extremely limited time  
2 available to prepare this bill draft for this week's  
3 meeting, this research is limited and is meant only to help  
4 the Committee identify possible issues with this bill  
5 draft.  
6

7 First, the Wyoming Constitution prohibits appropriations to  
8 be made for "charitable, industrial, educational or  
9 benevolent purposes" to any person or corporation not under  
10 the state's absolute control. Wyo. Const. art. 3, § 36.  
11

12 Second, the Constitution prohibits the state from loaning  
13 or giving its credit or making "donations to or in aid of  
14 any individual, association or corporation, except for  
15 necessary support of the poor." Wyo. Const. art. 16, §  
16 6(a).  
17

18 In addition, all appropriations made must be for a public  
19 purpose. See State v. Carter, 215 P. 477, 479 (Wyo. 1923)  
20 (stating that "it is elementary that the legislature cannot  
21 levy a tax or make an appropriation except only for public  
22 purposes, and this is true whether the constitution so  
23 expressly provides or not."). In Carter, the Court held  
24 that an appropriation to the widow of a peace officer  
25 killed in the line of duty did not offend Article 3,  
26 Section 36, because the legislature could recognize that  
27 the death gave rise to a moral obligation that it could  
28 fulfill through an appropriation of money. Id. at 483-84.  
29

30 It is not clear to what extent the noted constitutional  
31 provisions apply to the federal CARES Act funds that the  
32 state received. At least one state court has held that,  
33 when federal funds are received in the state's treasury, at  
34 least one provision of that state's constitution (requiring  
35 legislative appropriation) applies. Anderson v. Regan, 425  
36 N.E.2d 792, 793-95 (N.Y. 1981). Conversely, another state  
37 court has held that unmatched federal funds are custodial  
38 funds that are not subject to legislative appropriation.  
39 Colo. Gen. Assembly v. Lamm, 738 P.2d 1156, 1170 (Colo.  
40 1987). Another state's constitution explicitly provides  
41 that federal funds may be received by the state "and be  
42 redistributed together with public money of this state for  
43 any public purpose designated by the United States." Mo.  
44 Const. art. III, § 38(a).  
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4 **Section 1.**

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6 (a) The legislature finds that:

7  
8 (i) In December 2019, a novel coronavirus known  
9 as severe acute respiratory syndrome coronavirus 2 (SARS-  
10 CoV-2) was first detected in China, leading to outbreaks of  
11 novel coronavirus disease (COVID-19) that have now spread  
12 globally;

13  
14 (ii) On March 13, 2020, the president of the  
15 United States and the governor of Wyoming declared  
16 emergencies in anticipation of the spread of COVID-19 and  
17 following nationwide cancellations, suspensions, and  
18 growing cases of COVID-19;

19  
20 (iii) The governor, the state health officer,  
21 local health officers, local officials and tribal leaders  
22 responded with swift measures to contain the spread of  
23 COVID-19, minimize the public's exposure to COVID-19 and

1 protect the health, safety and well-being of Wyoming  
2 residents;

3

4 (iv) Among other actions, the governor and the  
5 state health officer enacted statewide orders that limited  
6 gatherings to ten (10) people or less and that required  
7 many Wyoming businesses to close or to severely curtail  
8 their operations in order to protect the health and safety  
9 of all Wyoming residents;

10

11 (v) The crisis and the required closures have  
12 caused Wyoming businesses to experience an unprecedented  
13 and unforeseen loss of revenue and income. Accordingly, it  
14 is unclear whether those businesses will be able to  
15 adequately recover and continue contributing to Wyoming's  
16 economy;

17

18 (vi) The Wyoming businesses that have been  
19 affected by the public health crisis and required closures  
20 also help provide critical products, supplies and services  
21 to Wyoming residents and industries;

22

1           (vii) While it is not currently possible to fully  
2 assess the scope, duration and severity of the impact of  
3 the public health crisis to Wyoming businesses, the  
4 recovery efforts will require a dedicated response by  
5 Wyoming's state government, tribal governments and local  
6 governments of Wyoming's counties, cities, towns and  
7 political subdivisions;

8

9           (viii) The federal Coronavirus Aid, Relief, and  
10 Economic Security (CARES) Act, Public Law No. 116-136, has  
11 provided the state government of Wyoming with relief funds  
12 of one billion two hundred fifty million dollars  
13 (\$1,250,000,000.00) to cover costs that are necessary  
14 expenditures incurred due to the public health emergency  
15 with respect to COVID-19. Further federal stimulus aid may  
16 be forthcoming to the states from the federal government to  
17 address this crisis;

18

19           (ix) Due to the extraordinary circumstances of  
20 the COVID-19 public health emergency and resulting economic  
21 devastation, joint action of the legislature and executive  
22 branches in determining how the CARES Act relief funds are  
23 expended will result in the greatest benefit to the state;

1

2 (x) Among other things, payments to state and  
3 local programs to support Wyoming businesses and economic  
4 development projects are a priority need requiring funding  
5 from these and any future federal stimulus funds.

6

7 (b) In order to address the harms that Wyoming  
8 businesses experienced because of the public health crisis  
9 and to ensure the availability of and an adequate supply of  
10 goods and services to Wyoming's residents and industries,  
11 the legislature finds that the state has an obligation to  
12 use a portion of the CARES Act relief funds and any other  
13 federal stimulus funds made available to the state to  
14 ensure that Wyoming businesses can remain open and  
15 contribute to Wyoming's economy.

16

17 **Section 2.**

18

19 (a) As used in this section:

20

21 (i) "Council" means the Wyoming business council;

22

23 (ii) "Eligible business" means a business that:

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(A) Was established on or before the date of enactment of any order issued by the state or any local government of Wyoming that established required closures of businesses in response to the COVID-19 pandemic;

(B) Is independently owned and operated;

(C) Is headquartered in Wyoming or has its principal operations located in Wyoming;

(D) Has fifty (50) employees or less; and

(E) As of the date of submitting an application for a stipend under subsection (b) of this section, has not received any funding from the paycheck protection program or any other business relief program established by the Coronavirus, Aid, Relief, and Economic Security (CARES) Act, Public Law No. 116-136, and has not received any funding from any other federal program established or providing funding in response to the COVID-19 pandemic.

1           (iii) "Required closure" means the closure of a  
2 business that was ordered by the state or any local  
3 government of Wyoming in an order issued or in effect  
4 beginning March 15, 2020 in response to the COVID-19  
5 pandemic. "Required closure" shall also include the  
6 interruption of a business's normal business as a result of  
7 any closures.

8

9           (b) The Wyoming business interruption stipend program  
10 is hereby created. The Wyoming business council shall  
11 establish and administer this temporary program to  
12 reimburse eligible businesses for the costs of business  
13 interruptions caused by required closures. Stipends awarded  
14 under this section shall:

15

16           (i) Not be awarded until an eligible business  
17 submits, and the council approves, an application. The  
18 application shall be developed by the council and shall  
19 require each applicant to certify that the business is an  
20 eligible business as defined by this section and that  
21 knowingly making a false statement to the council on the  
22 application is prohibited and may result in the applicant



1 being required to repay all funds awarded under this  
2 section;

3

4 (ii) Be conditioned upon the applicant certifying  
5 to the council that the eligible business has incurred  
6 actual losses as a result of business interruptions due to  
7 a required closure;

8

9 (iii) Be fifteen thousand dollars (\$15,000.00),  
10 plus an additional one thousand dollars (\$1,000.00) for  
11 every one (1) employee that the eligible business had  
12 employed on March 15, 2020. In no event shall a stipend  
13 issued under this section exceed fifty thousand dollars  
14 (\$50,000.00);

15

16 (iv) Be made only with funds provided to the  
17 state government of Wyoming under the federal CARES Act. No  
18 state funds of any kind and from any source shall be  
19 expended on the payment of stipends awarded under this  
20 section.

21

1           (c) The council shall promulgate any emergency and  
2 regular rules necessary to administer the program  
3 authorized by this section.

4

5           (d) The attorney general shall review in writing the  
6 legality of the program and any rules established for the  
7 program authorized by this section.

8

9           (e) No expenditure of funds shall be made under this  
10 section except in accordance with state and federal laws,  
11 regulations and orders.

12

13           (f) The council shall conduct random audits of  
14 eligible businesses receiving stipends under this section  
15 to ensure awarded funds are expended in compliance with  
16 state and federal law.

17

18           (g) There is appropriated to the Wyoming business  
19 council up to twenty-five million dollars (\$25,000,000.00)  
20 from any federal funds made available for expenditure  
21 through the Coronavirus Aid, Relief, and Economic Security  
22 (CARES) Act, Public Law No. 116-136, or from any other  
23 available federal funds related to the COVID-19 emergency

1 response. If a COVID-19 relief account or other similarly  
2 named account is created for the deposit of COVID-19  
3 related emergency response funds, this appropriation shall  
4 be made from that account. This appropriation shall be used  
5 only for the establishment and operation of the program  
6 authorized by this section. This appropriation shall not be  
7 transferred or expended for any other purpose. Any  
8 unobligated, unexpended funds remaining from this  
9 appropriation on December 31, 2020 shall revert as provided  
10 by law.

11

12 (h) The program created by this section shall  
13 terminate on December 31, 2020.

14

15 **Section 3.**

16

17 (a) As used in this section:

18

19 (i) "Council" means the Wyoming business council;

20

21 (ii) "Eligible business" means a business that:

22

1 (A) Was established on or before the date of  
2 enactment of any order issued by the state or any local  
3 government of Wyoming that established required closures of  
4 businesses in response to the COVID-19 pandemic;

5

6 (B) Is independently owned and operated;

7

8 (C) Is headquartered in Wyoming or has its  
9 principal operations located in Wyoming; and

10

11 (D) Has one hundred (100) employees or less.

12

13 (iii) "Financial institution" means a bank,  
14 mortgage banking company, trust company, savings bank,  
15 savings and loan association, credit union, national  
16 banking association, federal savings and loan association  
17 or federal credit union maintaining an office in this state  
18 and authorized to do business and make loans in this state;

19

20 (iv) "Nonrecourse loan" means a loan for which  
21 the only recourse for the lender to pursue in case of  
22 default is the collateral provided for the loan;

23

1           (v) "Required closure" means the closure of a  
2 business that was ordered by the state or any local  
3 government of Wyoming in an order issued or in effect  
4 beginning March 15, 2020 in response to the COVID-19  
5 pandemic. "Required closure" shall also include the  
6 interruption of a business's normal business as a result of  
7 any closures.

8  
9           (b) The coronavirus business relief loan program is  
10 hereby created. The Wyoming business council shall  
11 establish and administer this temporary program for the  
12 purpose of providing loans to eligible businesses adversely  
13 impacted by the COVID-19 pandemic or by required closures.  
14 Loans shall be issued under this section in accordance with  
15 the following:

16  
17           (i) Any eligible business may apply to the  
18 council for a loan under this section. The application  
19 shall require the applicant to certify that it is an  
20 eligible business as defined by this section. The  
21 application shall also provide that knowingly making a  
22 false statement to the council on the application is

1 prohibited and may result in the applicant being required  
2 to repay all funds awarded under this section;

3

4 (ii) The business council may authorize financial  
5 institutions to serve as eligible lenders for the program.  
6 Any financial institution serving as a lender may use their  
7 own online systems and a form they establish to serve as an  
8 application, provided that any form includes the  
9 information required in paragraph (i) of this subsection  
10 and any other information required by rule of the council;

11

12 (iii) Loans issued under this section shall be  
13 nonrecourse loans. Loans shall be made under terms and  
14 conditions prescribed by the council, subject to the  
15 following:

16

17 (A) The interest rate for any loan made  
18 under this section shall be one percent (1%) per annum.  
19 Interest on loans under this program shall be paid annually  
20 and shall be retained by the lender, or the council if the  
21 council makes loans directly, as a fee for administering  
22 the loans authorized and made under this section;

23

1                   (B) For loans made under this section by  
2 financial institutions, the council shall provide the  
3 necessary funds from the appropriation provided in  
4 subsection (h) of this section for the financial  
5 institution to disburse to the eligible business receiving  
6 the proceeds of the loan;

7

8                   (C) In the event of default of any loan made  
9 under this section, the interest of the council and the  
10 lender shall have priority over any claim of the business  
11 receiving the financing or any other third party.

12

13                   (iv) The type and adequacy of the collateral  
14 shall be determined by the council;

15

16                   (v) Before making a loan under this section, the  
17 applicant shall demonstrate to the council's satisfaction  
18 the actual losses that the eligible business has incurred  
19 as a result of the COVID-19 pandemic or as a result of  
20 business interruptions due to a required closure;

21

1 (vi) Loans made under this section shall not  
2 exceed one hundred thousand dollars (\$100,000.00) for each  
3 eligible business;

4

5 (vii) Loans shall be made only with funds  
6 provided to the state government of Wyoming under the  
7 federal CARES Act. No state funds of any kind and from any  
8 source shall be expended on the payment of loans or the  
9 disbursement of loan proceeds made under this section;

10

11 (viii) Loans made under this section shall have a  
12 term of ten (10) years. Notwithstanding any other provision  
13 of law, no principal payments shall be due for the first  
14 two (2) years of the loan term. The council shall issue a  
15 credit against any remaining principal for any and all  
16 state taxes paid during the loan term.

17

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19 \*\*\*\*\*

20 **STAFF COMMENT**

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22 **The chairmen would like to consider whether a credit**  
23 **against the loan's principal should be given for a**  
24 **percentage of an eligible business's payroll that is**  
25 **maintained during the life of the loan.**

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2 (c) The council shall promulgate any emergency and  
3 regular rules necessary to administer the program  
4 authorized by this section.

5

6 (d) The attorney general shall review in writing the  
7 legality of the program and any rules established for the  
8 program authorized by this section.

9

10 (e) No expenditure of funds shall be made under this  
11 section except in accordance with state and federal laws,  
12 regulations and orders.

13

14 (f) The council shall conduct random audits of  
15 eligible businesses receiving loans made under this section  
16 to ensure funds are expended in compliance with state and  
17 federal law.

18

19 (g) No loans shall be made under this section on or  
20 after December 30, 2020.

21

22 (h) There is appropriated to the Wyoming business  
23 council up to one hundred seventy-five million dollars

1 (\$175,000,000.00) from any federal funds made available for  
2 expenditure through the Coronavirus Aid, Relief, and  
3 Economic Security (CARES) Act, Public Law No. 116-136, or  
4 from any other available federal funds related to the  
5 COVID-19 emergency response. If a COVID-19 relief account  
6 or other similarly named account is created for the deposit  
7 of COVID-19 related emergency response funds, this  
8 appropriation shall be made from that account. This  
9 appropriation shall be used only for the establishment and  
10 operation of the program authorized by this section. This  
11 appropriation shall not be transferred or expended for any  
12 other purpose. Any unobligated, unexpended funds remaining  
13 from this appropriation on December 31, 2020 shall revert  
14 as provided by law.

15

16 **Section 4.**

17

18 (a) As used in this section:

19

20 (i) "Council" means the Wyoming business council;

21

22 (ii) "COVID-related expenses" means actual  
23 expenses incurred in Wyoming for the health and safety of

1 Wyoming employees as a result of the COVID-19 pandemic and  
2 include cleaning products, sanitizers, personal protection  
3 equipment, other safety equipment, expenses related to  
4 training to implement necessary and required protocols to  
5 continue operating the business and expenses related to  
6 hiring and paying employees necessary to implement  
7 protocols associated with screening, safety, security,  
8 cleaning and sanitizing business premises;

9

10 (iii) "Eligible business" means a business that  
11 was established on or before the date of enactment of any  
12 order issued by the state or any local government of  
13 Wyoming that established required closures of businesses in  
14 response to the COVID-19 pandemic.

15

16 (b) The coronavirus mitigation stipend program is  
17 hereby created. The Wyoming business council shall  
18 establish and administer this temporary program for the  
19 purpose of providing stipends to reimburse eligible  
20 businesses adversely impacted by the COVID-19 pandemic for  
21 COVID-related expenses. Stipends issued under this section  
22 shall:

23

1           (i) Not be awarded until an eligible business  
2 submits, and the council approves, an application. The  
3 application shall be developed by the council and shall  
4 require each applicant to certify that the business is an  
5 eligible business as defined by this section and that  
6 knowingly making a false statement to the council on the  
7 application is prohibited and may result in the applicant  
8 being required to repay of all funds awarded under this  
9 section;

10  
11           (ii) Be made only to reimburse COVID-related  
12 expenses that an eligible business actually incurred  
13 between March 1, 2020 and December 1, 2020;

14  
15           (iii) Be conditioned upon the eligible business  
16 demonstrating to the council's satisfaction in the  
17 application that it has incurred COVID-related expenses  
18 reimbursable by the stipend provided in this section;

19  
20           (iv) Be in an amount not to exceed two hundred  
21 thousand dollars (\$200,000.00);

22

1           (v) Be made only with funds provided to the state  
2 government of Wyoming under the federal CARES Act. No state  
3 funds of any kind and from any source shall be expended to  
4 pay stipends awarded under this section.

5

6           (c) The council shall promulgate any emergency and  
7 regular rules necessary to administer the program  
8 authorized by this section.

9

10          (d) The attorney general shall review in writing the  
11 legality of the program and any rules established for the  
12 program authorized by this section.

13

14          (e) No expenditure of funds shall be made under this  
15 section except in accordance with state and federal laws,  
16 regulations and orders.

17

18          (f) The council shall conduct random audits of  
19 eligible businesses receiving loans made under this section  
20 to ensure funds are expended in compliance with state and  
21 federal law.

22

1           (g) There is appropriated to the Wyoming business  
2 council up to twenty-five million dollars (\$25,000,000.00)  
3 from any federal funds made available for expenditure  
4 through the Coronavirus Aid, Relief, and Economic Security  
5 (CARES) Act, Public Law No. 116-136, or from any other  
6 available federal funds related to the COVID-19 emergency  
7 response. If a COVID-19 relief account or other similarly  
8 named account is created for the deposit of COVID-19  
9 related emergency response funds, this appropriation shall  
10 be made from that account. This appropriation shall be used  
11 only for the establishment and operation of the program  
12 authorized by this section. This appropriation shall not be  
13 transferred or expended for any other purpose. Any  
14 unobligated, unexpended funds remaining from this  
15 appropriation on December 31, 2020 shall revert as provided  
16 by law.

17

18           (h) The program created by this section shall  
19 terminate on December 31, 2020.

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21           **Section 5.** This act is effective immediately upon  
22 completion of all acts necessary for a bill to become law

1 as provided by Article 4, Section 8 of the Wyoming  
2 Constitution.

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(END)