COVID-19 business relief programs.

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

A BILL

for

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

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

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STAFF COMMENT

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[Bill Number]
The Committee should note that the programs created by this act may implicate a number of provisions of the Wyoming Constitution. Because of the extremely limited time available to prepare this bill draft for this week's meeting, this research is limited and is meant only to help the Committee identify possible issues with this bill draft.

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

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

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

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

Section 1.

(a) The legislature finds that:

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

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

(iii) The governor, the state health officer, local health officers, local officials and tribal leaders responded with swift measures to contain the spread of
COVID-19, minimize the public's exposure to COVID-19 and protect the health, safety and well-being of Wyoming residents;

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

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

(vi) The Wyoming businesses that have been affected by the public health crisis and required closures also help provide critical products, supplies and services to Wyoming residents and industries;
(vii) While it is not currently possible to fully assess the scope, duration and severity of the impact of the public health crisis to Wyoming businesses, the recovery efforts will require a dedicated response by Wyoming's state government, tribal governments and local governments of Wyoming's counties, cities, towns and political subdivisions;

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

(ix) Due to the extraordinary circumstances of the COVID-19 public health crisis and resulting economic devastation, joint action of the legislature and executive branches in determining how the CARES Act relief funds are expended will result in the greatest benefit to the state;
Among other things, payments to state and local programs to support Wyoming businesses and economic development projects are a priority need requiring funding from these and any future federal stimulus funds.

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

Section 2.

(a) As used in this section:

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

(ii) "Eligible business" means a business that:
(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; and

(D) On March 31, 2020, had employed the equivalent of fifty (50) full-time employees or less. For purposes of this subparagraph, both full-time and part-time employees shall be counted in the calculation of full-time equivalent employees.

(iii) "Required closure" means the closure of a business that was ordered by the state or any local government of Wyoming in an order issued or in effect beginning March 15, 2020 in response to the COVID-19 pandemic. "Required closure" shall also include the
(b) The Wyoming business interruption stipend program is hereby created. The Wyoming business council shall establish and administer this temporary program to reimburse eligible businesses for the costs of business interruptions caused by required closures. Stipends awarded under this section shall:

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

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

(iii) Be fifteen thousand dollars ($15,000.00), plus an additional two thousand dollars ($2,000.00) for every one (1) full-time employee and an additional one thousand dollars ($1,000.00) for every one (1) part-time employee that the eligible business had employed in Wyoming on March 31, 2020. In no event shall a stipend issued under this section exceed fifty thousand dollars ($50,000.00);

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

(c) In awarding stipends under this section, the council shall give preference to those eligible businesses that, 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
established by the Coronavirus, Aid, Relief, and Economic

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

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

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

(g) The council may conduct and contract for random
audits of eligible businesses receiving stipends under this
section to ensure awarded funds are expended in compliance
with state and federal law.

(h) There is appropriated to the Wyoming business
council up to fifty million dollars ($50,000,000.00) from
any federal funds made available for expenditure through
the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Public Law No. 116-136, or from any other available federal funds related to the COVID-19 emergency response. If a COVID-19 relief account or other similarly named account is created for the deposit of COVID-19 related emergency response funds, this appropriation shall be made from that account. This appropriation shall be used only for the establishment and operation of the program authorized by this section. This appropriation shall not be transferred or expended for any other purpose. Any unobligated, unexpended funds remaining from this appropriation on December 30, 2020 shall revert as provided by law.

(j) The program created by this section shall terminate on December 30, 2020.

Section 3.

(a) As used in this section:

(i) "Council" means the Wyoming business council;
(ii) "Eligible business" means a business that:

(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; and

(D) On March 31, 2020, had employed the equivalent of one hundred (100) full-time employees or less. For purposes of this subparagraph, both full-time and part-time employees shall be counted in the calculation of full-time equivalent employees.

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

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

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

(b) The coronavirus business relief loan program is
hereby created. The Wyoming business council shall
establish and administer this temporary program for the
purpose of providing loans to eligible businesses adversely
impacted by the COVID-19 pandemic or by required closures.
Loans shall be issued under this section in accordance with
the following:
(i) Any eligible business may apply to the council for a loan under this section. The application shall require the applicant to certify that it is an eligible business as defined by this section. The application shall also provide that knowingly making a false statement to the council on the application is prohibited and may result in the applicant being required to repay all funds awarded under this section;

(ii) The business council may authorize financial institutions to serve as servicers for loans made under this section. Any financial institution serving as a servicer may accept applications from eligible businesses on forms provided by the council, provided that any form supplied by the council includes the information required in paragraph (i) of this subsection and that the financial institution forwards any application received to the council for approval;

(iii) Loans issued under this section shall be nonrecourse loans. Loans shall be made under terms and conditions prescribed by the council, subject to the following:
(A) The interest rate for any loan made under this section shall be zero percent (0%) per annum. The council shall pay a fee of one percent (1%) of the amount of each loan to the financial institution for each loan that the financial institution services as a fee for servicing the loans authorized and made under this section;

(B) The council shall provide the necessary funds from the appropriation provided in subsection (h) of this section for disbursement to the eligible businesses receiving the proceeds of the loan;

(C) In the event of default of any loan made under this section, the interest of the council shall have priority over any claim of the business receiving the financing.

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

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

(vi) Loans made under this section shall not exceed three hundred thousand dollars ($300,000.00) for each eligible business;

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

(viii) Loans made under this section shall have a term of ten (10) years. Notwithstanding any other provision of law, no principal payments shall be due for the first two (2) years of the loan term. The council shall issue a credit against any remaining principal for:

(A) Any and all state taxes and any and all fees imposed by statute paid during the loan term;
(B) An amount equal to twelve percent (12%) of the eligible business's gross payroll during the loan term.

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STAFF COMMENT
Based on discussion from Thursday's meeting, the Committee may wish to consider whether to add "or remitted" after "paid" in subparagraph (A) above to account for those sales taxes that a business collects from customers that are then remitted to the state.

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

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

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

Based on the Committee's discussion at its Thursday meeting, the Committee may wish to insert "or retirement or forgiveness of loans" after "funds" in subsection (e) above.

In addition, the chairmen would like the Committee to consider inserting a new subsection as follows:

"(f) Before December 30, 2020, the council shall review all outstanding loans for potential forgiveness of those loans in accordance with state and federal law, provided that any eligible business receiving a loan under this section shall provide tax and payroll records to the council for the next three (3) years."

(f) The council may conduct and contract for random audits of eligible businesses receiving loans made under this section to ensure funds are expended in compliance with state and federal law.

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

(h) There is appropriated to the Wyoming business council up to one hundred seventy-five million dollars
($175,000,000.00) from any federal funds made available for expenditure through the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Public Law No. 116-136, or from any other available federal funds related to the COVID-19 emergency response. If a COVID-19 relief account or other similarly named account is created for the deposit of COVID-19 related emergency response funds, this appropriation shall be made from that account. This appropriation shall be used only for the establishment and operation of the program authorized by this section. This appropriation shall not be transferred or expended for any other purpose. Any unobligated, unexpended funds remaining from this appropriation on December 30, 2020 shall revert as provided by law.

Section 4.

(a) As used in this section:

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

(ii) "COVID-related expenses" means actual expenses incurred in Wyoming for the health and safety of
Wyoming employees and expenses incurred by Wyoming employers to comply with public health guidelines for the health and safety of Wyoming employees as a result of the COVID-19 pandemic and include cleaning products, sanitizers, personal protection equipment, other safety equipment, expenses related to training to implement necessary and required protocols to continue operating the business and expenses related to hiring and paying employees necessary to implement protocols associated with screening, safety, security, cleaning and sanitizing business premises;

(iii) "Eligible business" means a business that 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) The coronavirus mitigation stipend program is hereby created. The Wyoming business council shall establish and administer this temporary program for the purpose of providing stipends to reimburse eligible businesses adversely impacted by the COVID-19 pandemic for
COVID-related expenses. Stipends issued under this section shall:

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

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

(iii) Be conditioned upon the eligible business demonstrating to the council's satisfaction in the application that it has incurred COVID-related expenses reimbursable by the stipend provided in this section;
(iv) Be in an amount not to exceed five hundred thousand dollars ($500,000.00);

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

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

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

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

(f) The council may conduct and contract for random audits of eligible businesses receiving loans made under
this section to ensure funds are expended in compliance
with state and federal law.

(g) There is appropriated to the Wyoming business
council up to fifty million dollars ($50,000,000.00) from
any federal funds made available for expenditure through
the Coronavirus Aid, Relief, and Economic Security (CARES)
Act, Public Law No. 116-136, or from any other available
federal funds related to the COVID-19 emergency response.
If a COVID-19 relief account or other similarly named
account is created for the deposit of COVID-19 related
emergency response funds, this appropriation shall be made
from that account. This appropriation shall be used only
for the establishment and operation of the program
authorized by this section. This appropriation shall not be
transferred or expended for any other purpose. Any
unobligated, unexpended funds remaining from this
appropriation on December 30, 2020 shall revert as provided
by law.

(h) The program created by this section shall
terminate on December 30, 2020.
Section 5. This act is 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.