

**DRAFT ONLY  
NOT APPROVED FOR  
INTRODUCTION**

HOUSE BILL NO.

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 related to business relief; providing legislative findings;  
3 authorizing emergency governmental programs related to  
4 economic development and business relief as specified;  
5 providing appropriations; providing a sunset date for  
6 created emergency programs; and providing for an effective  
7 date.

8

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

10

11 \*\*\*\*\*

12 \*\*\*\*\*

13 STAFF COMMENT

14

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

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

13  
14 Second, the Constitution prohibits the state from loaning  
15 or giving its credit or making "donations to or in aid of  
16 any individual, association or corporation, except for  
17 necessary support of the poor." Wyo. Const. art. 16, §  
18 6(a).

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

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

1 any public purpose designated by the United States." Mo.  
2 Const. art. III, § 38(a).

3  
4 \*\*\*\*\*  
5 \*\*\*\*\*  
6

7       **Section 1.**

8  
9       (a) The legislature finds that:

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

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

22  
23           (iii) The governor, the state health officer,  
24 local health officers, local officials and tribal leaders  
25 responded with swift measures to contain the spread of

1 COVID-19, minimize the public's exposure to COVID-19 and  
2 protect the health, safety and well-being of Wyoming  
3 residents;

4

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

11

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

18

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

23

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 crisis with  
15 respect to COVID-19. Further federal stimulus aid may be  
16 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 crisis 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:

1

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

6

7 (B) Is independently owned and operated;

8

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

11

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

17

18 (iii) "Required closure" means the closure of a  
19 business that was ordered by the state or any local  
20 government of Wyoming in an order issued or in effect  
21 beginning March 15, 2020 in response to the COVID-19  
22 pandemic. "Required closure" shall also include the

1 interruption of a business's normal business as a result of  
2 any closures or public health orders.

3  
4 (b) The Wyoming business interruption stipend program  
5 is hereby created. The Wyoming business council shall  
6 establish and administer this temporary program to  
7 reimburse eligible businesses for the costs of business  
8 interruptions caused by required closures. Stipends awarded  
9 under this section shall:

10  
11 (i) Not be awarded until an eligible business  
12 submits, and the council approves, an application. The  
13 application shall be developed by the council and shall  
14 require each applicant to certify that the business is an  
15 eligible business as defined by this section and that  
16 knowingly making a false statement to the council on the  
17 application is prohibited and may result in the applicant  
18 being required to repay all funds awarded under this  
19 section;

20  
21 (ii) Be conditioned upon the applicant certifying  
22 to the council that the eligible business has incurred



1 actual losses as a result of business interruptions due to  
2 a required closure;

3

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

11

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

17

18 (c) In awarding stipends under this section, the  
19 council shall give preference to those eligible businesses  
20 that, as of the date of submitting an application for a  
21 stipend under subsection (b) of this section, has not  
22 received any funding from the paycheck protection program

1 established by the Coronavirus, Aid, Relief, and Economic  
2 Security (CARES) Act, Public Law No. 116-136.

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

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

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

15  
16 (g) The council may conduct and contract for random  
17 audits of eligible businesses receiving stipends under this  
18 section to ensure awarded funds are expended in compliance  
19 with state and federal law.

20  
21 (h) There is appropriated to the Wyoming business  
22 council up to fifty million dollars (\$50,000,000.00) from  
23 any federal funds made available for expenditure through

1 the Coronavirus Aid, Relief, and Economic Security (CARES)  
2 Act, Public Law No. 116-136, or from any other available  
3 federal funds related to the COVID-19 emergency response.  
4 If a COVID-19 relief account or other similarly named  
5 account is created for the deposit of COVID-19 related  
6 emergency response funds, this appropriation shall be made  
7 from that account. This appropriation shall be used only  
8 for the establishment and operation of the program  
9 authorized by this section. This appropriation shall not be  
10 transferred or expended for any other purpose. Any  
11 unobligated, unexpended funds remaining from this  
12 appropriation on December 30, 2020 shall revert as provided  
13 by law.

14

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

17

18 **Section 3.**

19

20 (a) As used in this section:

21

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

23

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

2

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

7

8           (B) Is independently owned and operated;

9

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

12

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

18

19           (iii) "Financial institution" means a bank,  
20 mortgage banking company, trust company, savings bank,  
21 savings and loan association, credit union, national  
22 banking association, federal savings and loan association

1 or federal credit union maintaining an office in this state  
2 and authorized to do business and make loans in this state;

3  
4 (iv) "Nonrecourse loan" means a loan for which  
5 the only recourse for the lender to pursue in case of  
6 default is the collateral provided for the loan;

7  
8 (v) "Required closure" means the closure of a  
9 business that was ordered by the state or any local  
10 government of Wyoming in an order issued or in effect  
11 beginning March 15, 2020 in response to the COVID-19  
12 pandemic. "Required closure" shall also include the  
13 interruption of a business's normal business as a result of  
14 any closures or public health orders.

15  
16 (b) The coronavirus business relief loan program is  
17 hereby created. The Wyoming business council shall  
18 establish and administer this temporary program for the  
19 purpose of providing loans to eligible businesses adversely  
20 impacted by the COVID-19 pandemic or by required closures.  
21 Loans shall be issued under this section in accordance with  
22 the following:

1           (i) Any eligible business may apply to the  
2 council for a loan under this section. The application  
3 shall require the applicant to certify that it is an  
4 eligible business as defined by this section. The  
5 application shall also provide that knowingly making a  
6 false statement to the council on the application is  
7 prohibited and may result in the applicant being required  
8 to repay all funds awarded under this section;

9

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

19

20           (iii) Loans issued under this section shall be  
21 nonrecourse loans. Loans shall be made under terms and  
22 conditions prescribed by the council, subject to the  
23 following:

1

2 (A) The interest rate for any loan made  
3 under this section shall be zero percent (0%) per annum.  
4 The council shall pay a fee of one percent (1%) of the  
5 amount of each loan to the financial institution for each  
6 loan that the financial institution services as a fee for  
7 servicing the loans authorized and made under this section;

8

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

13

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

18

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

21

22 (v) Before making a loan under this section, the  
23 applicant shall demonstrate to the council's satisfaction

1 the actual losses that the eligible business has incurred  
2 as a result of the COVID-19 pandemic or as a result of  
3 business interruptions due to a required closure or a  
4 public health order;

5

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

9

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

15

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

21

22 (A) Any and all state taxes and any and all  
23 fees imposed by statute paid during the loan term;



1

2 (B) An amount equal to twelve percent (12%)  
3 of the eligible business's gross payroll during the loan  
4 term.

5

6 \*\*\*\*\*

7 \*\*\*\*\*

8 STAFF COMMENT

9

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

15

16 \*\*\*\*\*

17 \*\*\*\*\*

18

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

22

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

26

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

1

2 \*\*\*\*\*  
3 \*\*\*\*\*

4 STAFF COMMENT

5

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

10

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

13

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

20

21 \*\*\*\*\*  
22 \*\*\*\*\*

23

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

28

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

31

32 (h) There is appropriated to the Wyoming business  
33 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 30, 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 and expenses incurred by Wyoming  
2 employers to comply with public health guidelines for the  
3 health and safety of Wyoming employees as a result of the  
4 COVID-19 pandemic and include cleaning products,  
5 sanitizers, personal protection equipment, other safety  
6 equipment, expenses related to training to implement  
7 necessary and required protocols to continue operating the  
8 business and expenses related to hiring and paying  
9 employees necessary to implement protocols associated with  
10 screening, safety, security, cleaning and sanitizing  
11 business premises;

12

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

18

19 (b) The coronavirus mitigation stipend program is  
20 hereby created. The Wyoming business council shall  
21 establish and administer this temporary program for the  
22 purpose of providing stipends to reimburse eligible  
23 businesses adversely impacted by the COVID-19 pandemic for

1 COVID-related expenses. Stipends issued under this section  
2 shall:

3

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

13

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

17

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

22

1           (iv) Be in an amount not to exceed five hundred  
2 thousand dollars (\$500,000.00);

3

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

8

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

12

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

16

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

20

21           (f) The council may conduct and contract for random  
22 audits of eligible businesses receiving loans made under

1 this section to ensure funds are expended in compliance  
2 with state and federal law.

3  
4 (g) There is appropriated to the Wyoming business  
5 council up to fifty million dollars (\$50,000,000.00) from  
6 any federal funds made available for expenditure through  
7 the Coronavirus Aid, Relief, and Economic Security (CARES)  
8 Act, Public Law No. 116-136, or from any other available  
9 federal funds related to the COVID-19 emergency response.  
10 If a COVID-19 relief account or other similarly named  
11 account is created for the deposit of COVID-19 related  
12 emergency response funds, this appropriation shall be made  
13 from that account. This appropriation shall be used only  
14 for the establishment and operation of the program  
15 authorized by this section. This appropriation shall not be  
16 transferred or expended for any other purpose. Any  
17 unobligated, unexpended funds remaining from this  
18 appropriation on December 30, 2020 shall revert as provided  
19 by law.

20  
21 (h) The program created by this section shall  
22 terminate on December 30, 2020.

1           **Section 5.** This act is effective immediately upon  
2 completion of all acts necessary for a bill to become law  
3 as provided by Article 4, Section 8 of the Wyoming  
4 Constitution.

5

6 ( END )