

SENATE FILE NO. SF0122

Wyoming agriculture authority.

Sponsored by: Senator(s) Boner, Kinskey, Steinmetz and  
Wasserburger and Representative(s) Clausen,  
Eklund and Hunt

A BILL

for

1 AN ACT relating to agriculture and livestock; establishing  
2 the Wyoming agriculture authority; specifying duties and  
3 powers of the authority; establishing a board for the  
4 authority; providing legislative findings; providing for  
5 financing of authority projects as specified; providing  
6 rulemaking authority; making a conforming amendment;  
7 providing an appropriation; and providing for an effective  
8 date.

9

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

11

12 **Section 1.** W.S. 11-52-101 through 11-52-207 are  
13 created to read:

14

15

CHAPTER 52

## 1 WYOMING AGRICULTURE AUTHORITY

2

## 3 ARTICLE 1

## 4 IN GENERAL

5

6 **11-52-101. Definitions.**

7

8 (a) As used in this article:

9

10 (i) "Agricultural processing" means harvesting,  
11 preserving, drying, processing, canning, packing, storing,  
12 handling or shipping meat, crops or other agricultural  
13 products and includes meat processing, crop processing and  
14 other agricultural products processing;

15

16 (ii) "Agricultural processing facility" means  
17 any facility where meat, crop or other agricultural product  
18 processing occurs;

19

20 (iii) "Agricultural product processing project"  
21 means any project related to or involving agricultural  
22 processing and any project included within W.S.  
23 11-52-104(a)(iv);

1

2 (iv) "Authority" means the Wyoming agriculture  
3 authority;

4

5 (v) "Board" means the board of the Wyoming  
6 agriculture authority;

7

8 (vi) "Bonds" means notes, warrants, bonds,  
9 temporary bonds and anticipation notes issued by the  
10 authority under this chapter;

11

12 (vii) "Producer" means any person who produces  
13 agricultural commodities in the state or who operates an  
14 agricultural product processing facility that will process,  
15 sell or distribute Wyoming products.

16

17 **11-52-102. Wyoming agriculture authority created;**  
18 **limitation on civil actions; report.**

19

20 (a) Except as otherwise provided, commencing July 1,  
21 2022, there is created the Wyoming agriculture authority,  
22 which is a body politic and corporate operating as an

1 instrumentality of the state of Wyoming, with authority to  
2 adopt an official seal and to sue and be sued.

3

4 (b) The authority shall be governed by a board  
5 composed of seven (7) voting members appointed by the  
6 governor, with the advice and consent of the senate. The  
7 board shall be appointed commencing on July 1, 2021 and  
8 shall adopt rules and carry out administrative functions in  
9 preparation for implementing other powers of the authority  
10 but shall not exercise those powers until July 1, 2022.  
11 Except as provided in this subsection, all voting members  
12 shall be appointed for four (4) year terms. The governor  
13 shall appoint four (4) initial voting board members to a  
14 term of four (4) years and shall appoint the remaining  
15 three (3) initial voting board members to a term of two (2)  
16 years. The governor may remove any member as provided in  
17 W.S. 9-1-202. Vacancies shall be filled by appointment by  
18 the governor in accordance with W.S. 28-12-101. The members  
19 shall elect from the membership a chairman, vice-chairman  
20 and secretary. A majority of the persons appointed and  
21 serving as members shall be qualified voters of the state  
22 of Wyoming. Voting members of the board shall be engaged  
23 chiefly in the agricultural industry. As used in this

1 section "agricultural industry" means work relating to the  
2 science, art, business or finance of cultivating soil,  
3 producing crops or raising livestock or the support of such  
4 work. At least two (2) members shall be engaged chiefly in  
5 beef production, at least one (1) member shall be engaged  
6 chiefly in sheep production, at least two (2) members shall  
7 be engaged chiefly in crop production, at least one (1)  
8 member shall be engaged chiefly in agricultural processing  
9 and at least one (1) member shall be engaged primarily in  
10 financing agribusinesses. Members of the board may receive  
11 the same per diem and travel allowance as members of the  
12 legislature under W.S. 28-5-101 while in attendance at  
13 meetings of the board and while performing their duties as  
14 members of the board.

15

16 (c) The following members shall serve as ex officio  
17 members of the board:

18

19 (i) The governor or a designee from his office;

20

21 (ii) The director of the department of  
22 agriculture or his designee;

23

1           (iii) The dean of the University of Wyoming  
2 college of agriculture or his designee;

3

4           (iv) The chief executive officer of the Wyoming  
5 business council or his designee.

6

7           (d) The board shall meet not less than two (2) times  
8 each year to conduct its business and to consider issues  
9 related to agricultural commodities and the agriculture  
10 industry in Wyoming.

11

12           (e) The authority may request the assistance of any  
13 agency, board, commission, department or institution of the  
14 state and the governing authorities of political  
15 subdivisions to make surveys, reports and investigations,  
16 furnish records, information and other assistance and  
17 advice upon mutually agreeable terms and conditions.

18

19           (f) Appointments and terms under this section shall  
20 be as provided in W.S. 28-12-101 through 28-12-103.

21

22           (g) The authority is subject to the requirements of:

23

1 (i) W.S. 16-3-101 through 16-3-105;

2

3 (ii) W.S. 16-4-201 through 16-4-205;

4

5 (iii) W.S. 16-4-401 through 16-4-408.

6

7 (h) The sole recourse of any party contracting with  
8 the authority shall be against the authority, and there  
9 shall be no cause of action against the state or any  
10 county, municipality or other political subdivision of the  
11 state.

12

13 (j) The authority shall annually submit a  
14 comprehensive report of the programs, objectives,  
15 activities and condition covering the previous fiscal  
16 period to the joint agriculture, state and public lands and  
17 water resources interim committee.

18

19 **11-52-103. Purposes.**

20

21 (a) The authority is created to:

22

1           (i) Diversify and expand the Wyoming economy and  
2 its agriculture industry;

3  
4           (ii) Coordinate strategies with the department  
5 of agriculture to improve agricultural processing  
6 facilities and capabilities, including:

7  
8           (A) Assisting processors seek federal  
9 grants and loans;

10  
11           (B) Increasing participation in applicable  
12 federal programs; and

13  
14           (C) In accordance with applicable federal  
15 program guidelines, implementing, administering and  
16 expanding federally funded programs for agricultural  
17 processing and agricultural processing facilities in  
18 Wyoming.

19  
20       **11-52-104. Powers of the authority.**

21  
22       (a) The authority may:

23



1           (i) Employ officers, agents and employees as it  
2 deems necessary for the performance of its duties and  
3 prescribe the powers and duties and fix the compensation of  
4 the officers, agents and employees;

5

6           (ii) Contract, upon terms as it may agree upon,  
7 for legal, financial, engineering and other professional  
8 services necessary or expedient in the conduct of its  
9 affairs;

10

11           (iii) Utilize the services of executive agencies  
12 of the state upon mutually agreeable terms and conditions;

13

14           (iv) Provide loans, grants, technical assistance  
15 or expertise to assist producers to plan, finance,  
16 construct, develop, acquire, own, lease, operate, maintain,  
17 modernize, upgrade or dispose of agricultural processing  
18 facilities and all other property, structures, equipment,  
19 utilities and works of public improvement necessary or  
20 useful to facilitate the processing of agricultural  
21 products in the state of Wyoming and the transportation,  
22 distribution and delivery of agricultural products that are

1 produced within this state including obtaining state and  
2 federal inspection status;

3

4 (v) Provide technical assistance and expertise  
5 to assist producers with permitting, siting and other  
6 regulatory requirements;

7

8 (vi) Receive by gift, grant, donation or  
9 otherwise, any sum of money, aid or assistance from the  
10 United States, the state of Wyoming, any political  
11 subdivision or any other public or private entity to the  
12 extent permitted by law;

13

14 (vii) Provide technical assistance or expertise  
15 to assist producers to acquire light, water,  
16 communications, security and other services for facilities  
17 as the authority deems advisable;

18

19 (viii) After consultation with any relevant  
20 state or federal authority, establish and collect fees,  
21 rates, tariffs or other charges and prepare a schedule of  
22 charges for all services rendered by the authority;

23

1           (ix) Investigate, plan and establish priorities  
2 for processing facilities in Wyoming;

3

4           (x) Engage with international and domestic  
5 stakeholders on potential market opportunities and  
6 agricultural processing projects to identify, develop and  
7 promote projects and market opportunities to increase the  
8 value of Wyoming agricultural products;

9

10           (xi) Enter into partnerships with public or  
11 private entities;

12

13           (xii) Conduct hearings and gather and develop  
14 relevant data consistent with the duties and powers of the  
15 authority;

16

17           (xiii) Advocate for or against any agricultural  
18 processing project before any regulatory body tasked with  
19 the oversight of the project;

20

21           (xiv) Develop and administer programs to educate  
22 producers and the public on agricultural processing and the

1 Wyoming agriculture industry including tours, academic  
2 programs and communication plans;

3

4 (xv) Do any and all things necessary or proper  
5 for the development, regulation and accomplishment of the  
6 purposes of the authority within the limitations of  
7 authority granted by this chapter.

8

9 (b) Any entity receiving assistance from the  
10 authority shall comply with all applicable state and  
11 federal regulations.

12

13 (c) The authority may borrow funds for the execution  
14 of the purposes of the authority, and mortgage and pledge  
15 any contracts granted, assigned or subleased by the  
16 authority.

17

18 (d) Except as provided in this section, the authority  
19 shall not exercise any of the rights or powers granted to  
20 it in this section if private persons, firms or  
21 corporations are performing the acts, constructing or have  
22 constructed the facilities or are providing the services

1 contemplated by the authority, except in accordance with  
2 subsection (e) of this section.

3

4 (e) Before exercising any rights or powers granted to  
5 it in this section, the authority shall publish in a  
6 newspaper of general circulation in Wyoming, and in a  
7 newspaper in the area where the authority contemplates  
8 providing financing or services, in the manner prescribed  
9 by law, a notice describing the acts or services  
10 contemplated by the authority. Private persons, firms or  
11 corporations wishing to perform the acts, construct the  
12 facilities or provide the services described in the notice  
13 shall have ninety (90) days from the date of last  
14 publication of the notice within which to notify the  
15 authority of their intention to perform the acts or provide  
16 the services described in the notice. A person or entity  
17 giving notice to the authority shall include an anticipated  
18 timeline for completion of the acts or services. In the  
19 absence of notification by a private person, firm or  
20 corporation, or if a person, firm or corporation, having  
21 given notice of intention to perform the acts or provide  
22 the services contemplated by the authority, fails to  
23 commence the same within one hundred eighty (180) days from

1 the date of last publication, the authority may proceed to  
2 perform the acts, or provide the services for which notice  
3 was given. A private person, firm or corporation that has  
4 made necessary applications to acquire any federal, state,  
5 local or private permits, certificates or other  
6 authorizations necessary to perform the acts or provide the  
7 services included in the authority's notice within the time  
8 required is deemed to have commenced the same. When a  
9 private person, firm or corporation has given notice of  
10 intent to perform or is performing the acts or providing  
11 the services that the authority contemplated, the authority  
12 may conduct hearings or meetings with the person, firm or  
13 corporation to assess progress toward completion of the  
14 intended acts to be performed or the services to be  
15 provided. If it appears to the authority that progress or  
16 completion of any or all of the intended acts or services  
17 may be delayed for one (1) year or more, the authority may  
18 proceed to perform the acts or provide the services  
19 originally contemplated.

20

21 (f) The authority shall promulgate rules to carry out  
22 the provisions of this chapter.

23

1           **11-52-105. Authority loan and grant program.**

2

3           (a) The authority shall establish and administer a  
4 loan and grant program under this chapter and may contract  
5 for necessary professional services. Loans and grants  
6 authorized under the program shall not exceed fifty million  
7 dollars (\$50,000,000.00) per project. Any person may submit  
8 an application to the authority to participate in the  
9 program on forms prescribed by and subject to rules  
10 promulgated by the authority.

11

12           (b) The authority shall establish all fees and  
13 interest rates to be charged for each loan as it is  
14 underwritten for this program. The interest rate for loans  
15 made under this program shall not be less than one percent  
16 (1%) per annum. Fees on loans under the program shall be  
17 paid monthly and deposited into a program administration  
18 account which is continuously appropriated to the authority  
19 to be expended solely for the purpose of administering this  
20 chapter and loans and grants authorized under it.

21

22           (c) Grants may be awarded by the authority to provide  
23 funding to producers to create, maintain or expand

1 infrastructure for agricultural processing facilities that  
2 will increase capacity for agricultural processing in the  
3 state. The authority shall establish requirements for  
4 grants awarded under this subsection.

5

6 **11-52-106. Confidential information.**

7

8 All information obtained by the authority in connection  
9 with any hearing or investigation under this article that  
10 contains or that might reveal proprietary data shall be  
11 considered as confidential for the purposes of this  
12 article. The authority shall not disclose confidential  
13 information to any person, governmental entity or agency  
14 without prior written consent from the owner of the  
15 confidential information. Any board or staff member who  
16 discloses or causes to be disclosed any confidential  
17 information is guilty of a misdemeanor punishable by  
18 imprisonment for not more than one (1) year, a fine of not  
19 more than one thousand dollars (\$1,000.00), or both.

20

21

ARTICLE 2

22

PROJECT FINANCING ASSISTANCE

23



1           **11-52-201. Legislative findings; applicability.**

2

3           (a) The legislature finds that:

4

5                   (i) Beginning when Wyoming was only a territory,  
6 the livestock industry has been an integral part of  
7 Wyoming's economy and agricultural heritage;

8

9                   (ii) Because of market conditions, both in  
10 Wyoming and across the nation, producers are facing  
11 challenges getting livestock to agricultural processing  
12 facilities in a timely, efficient and cost effective  
13 manner;

14

15                   (iii) Timely development of agricultural  
16 processing facilities in Wyoming will help increase revenue  
17 to the state;

18

19                   (iv) New infrastructure for agricultural  
20 processing will increase development of Wyoming's livestock  
21 industry;

22

1           (v) It is in the public interest of the citizens  
2 of this state to promote the economic welfare of the state  
3 and its residents by increasing employment, stimulating  
4 economic activity, augmenting sources of tax revenue,  
5 fostering economic stability, improving the balance of the  
6 state's economy and enhancing the food supply chain to  
7 ensure adequate quantities of wholesome foods are  
8 available;

9

10           (vi) This chapter constitutes a valid public  
11 purpose of primary benefit to all citizens of this state.

12

13           **11-52-202. Authority revenue bonds; issuance; amount.**

14

15           (a) The authority may issue and have outstanding  
16 bonds to finance agricultural processing facilities and  
17 agricultural processing projects consistent with the  
18 purposes of W.S. 11-52-103(a), in an amount not to exceed  
19 two hundred fifty million dollars (\$250,000,000.00). The  
20 authority shall have contracts sufficient to justify the  
21 issuance of bonds.

22

1           (b) The principal amount of any bonds that have been  
2 retired, redeemed, defeased or refunded by the authority  
3 need not be taken into account in computing compliance with  
4 the maximum amounts of bonds authorized to be issued under  
5 subsection (a) of this section.

6  
7           (c) Subject to subsection (a) of this section, the  
8 authority may issue bonds in principal amounts the  
9 authority determines necessary to provide sufficient funds  
10 for achieving its purposes under this article, including  
11 the reduction of principal, the payment of interest, the  
12 establishment of reserves, the costs of administration and  
13 for the purpose of defraying all other associated costs.  
14 All bonds issued under this article are negotiable  
15 instruments under the laws of this state unless expressly  
16 provided to the contrary on the face of the bonds. The  
17 authority may enter into contracts to insure the payment of  
18 principal and interest, for interest rate exchange  
19 contracts and for financial guarantees to lower the cost of  
20 its borrowing.

21

22           (d) All bonds issued by the authority are payable  
23 solely out of special funds consisting of all or part of

1 its revenues, receipts, monies and assets, as designated in  
2 the proceedings under which the bonds are authorized. All  
3 bonds shall bear interest at fixed or variable rates, be  
4 executed and delivered at times and in denominations, be of  
5 terms and maturities, be in registered form as to principal  
6 and interest or principal alone and bear manual or  
7 facsimile signatures and seals as the authority determines.  
8 Bonds issued by the authority are not general obligations  
9 of this state nor of any political subdivision of this  
10 state. The bonds shall solely be the obligation of the  
11 authority and shall recite on their face that they do not  
12 constitute obligations of the state or any political  
13 subdivision of the state.

14

15 (e) Bonds may be payable in installments and may bear  
16 maturities not exceeding forty (40) years from the date  
17 issued as the authority determines. Bonds may contain other  
18 provisions not inconsistent with this article.

19

20 (f) Any bonds that the authority issues may contain  
21 an option to redeem all or any part as may be specified.  
22 The price of redemption, the terms and conditions and the

1 procedure of notice shall be set forth by the authority and  
2 may appear on the face of the bonds.

3

4 (g) Any bonds of the authority may be sold at, above  
5 or below par value, at public or private sale, in a manner  
6 and from time to time as determined by the authority. The  
7 authority may pay legal fees, expenses, premiums and  
8 commissions that it finds necessary or advantageous to this  
9 state in connection with the issuance and sale.

10

11 (h) The authority may provide for the issuance of  
12 bonds to refund any bonds of the authority then  
13 outstanding, including for the payment of any redemption  
14 premium and any interest or premium accrued or to accrue  
15 to, the earliest or subsequent date of redemption, purchase  
16 or maturity of the bonds. Refunding shall be accomplished  
17 in the manner prescribed by W.S. 16-5-101 through 16-5-119  
18 to the extent it is not inconsistent with this article.

19

20 **11-52-203. Authority revenue bonds; security;**  
21 **payments after retirement.**

22

1           (a) The principal and interest on any bonds that the  
2 authority issues shall be secured by a pledge of revenues  
3 from the operation of the agricultural processing facility  
4 or agricultural processing project financed, by a first  
5 mortgage on the facilities, by guarantees and pledges of  
6 the entity owning the project or facility, or of the parent  
7 corporation owning said entity or by any combination  
8 thereof or other security as the authority may determine to  
9 be reasonable and prudent. The guarantees and pledges shall  
10 be no less favorable to the authority than those granted  
11 other lenders of the same class.

12

13           (b) The authority may require additional payments, as  
14 negotiated, to bondholders to be made either in a lump sum  
15 at the time of retirement of the bonds or annually from the  
16 time of retirement of the bonds until use of the  
17 agricultural processing facility or agricultural processing  
18 project is terminated or may require additional incentives  
19 from the owner of the project or facility to prospective  
20 bondholders so long as the incentives are not contrary to  
21 the Wyoming constitution.

22

1           (c) The authority may require such other security for  
2 repayment of the bonds as it deems necessary.

3

4           (d) Each pledge, agreement, mortgage or other  
5 instrument made for the benefit or security of any bonds of  
6 the authority is valid and binding from the time when made.  
7 The revenues, receipts, monies and assets pledged are  
8 immediately subject to the lien of the pledge without  
9 delivery or further act. The lien is valid and binding  
10 against persons having claims of any kind against the  
11 authority whether or not the persons have actual notice of  
12 the lien. The resolution or the indenture or other  
13 instrument by which a pledge is created need not be  
14 recorded or filed.

15

16           **11-52-204. Exemptions from taxation.**

17

18 The exercise of the powers granted by this article  
19 constitutes the performance of an essential governmental  
20 function. Any bonds issued under this article and the  
21 income therefrom shall be free from taxation of every kind  
22 by the state, municipalities and political subdivisions of  
23 the state.

1

2           **11-52-205. Bonds as legal investments.**

3

4 The bonds of the authority are legal investments that may  
5 be used as collateral for public funds of the state,  
6 insurance companies, banks, savings and loan associations,  
7 investment companies, trustees and other fiduciaries that  
8 may properly and legally invest funds in their control or  
9 belonging to them in bonds of the authority. With the  
10 written approval of the state loan and investment board and  
11 the attorney general, the state treasurer may invest monies  
12 from the permanent Wyoming mineral trust fund in bonds of  
13 the authority in an amount specified by the state loan and  
14 investment board and the attorney general but not to exceed  
15 the amount specified in W.S. 11-52-202(a). The interest  
16 payable on the bonds shall be not less than two percent  
17 (2%), and revenue under W.S. 11-52-202(a) shall be credited  
18 as received to the general fund. The limitation on specific  
19 public purpose investments under W.S. 9-4-715(n) shall not  
20 apply to investments made under this section.

21

22           **11-52-206. State pledge not to impair bondholder's**  
23 **rights and remedies.**



1

2 The state pledges to the holders of any bonds issued under  
3 this article that the state will not limit or alter the  
4 rights vested in the authority to fulfill the terms of  
5 agreements made with the holders, or in any way impair the  
6 rights and remedies of the holders until the bonds together  
7 with the interest, with interest on any unpaid installments  
8 of interest and all costs and expenses in connection with  
9 any action or proceeding by or on behalf of the holders are  
10 fully met and discharged. The authority is authorized to  
11 include this pledge of the state in any agreement with the  
12 holders of the bonds.

13

14 **11-52-207. Powers; duties; limitations.**

15

16 (a) The authority has the powers granted by W.S.  
17 11-52-101 through 11-52-106 as necessary to carry out the  
18 purposes of this article, including the power to hire  
19 technical consultants, financial advisors and legal  
20 advisors and specifically the powers granted by W.S.  
21 11-52-104(a)(ii). In addition to the powers otherwise  
22 granted to the authority, the authority shall have the  
23 power to:

1

2 (i) Enter into loans or other agreements with  
3 respect to one (1) or more agricultural processing projects  
4 or projects for agricultural processing facilities, upon  
5 terms and conditions the authority considers advisable;

6

7 (ii) Make and execute agreements, contracts and  
8 other instruments necessary or convenient in the exercise  
9 of its powers and functions, including contracts with any  
10 individual, firm, corporation, governmental agency or other  
11 entity.

12

13 (b) The authority may assess and collect fees that  
14 are nonrefundable from applicants seeking to obtain  
15 authority financing of an agricultural processing facility  
16 or agricultural processing project in total amounts not to  
17 exceed five hundred thousand dollars (\$500,000.00), which  
18 shall be credited to the authority.

19

20 (c) The authority shall maintain such records and  
21 accounts of revenues and expenditures as required by the  
22 director of the state department of audit. The director of  
23 the state department of audit or his designee shall conduct

1 an annual financial and legal compliance audit of the  
2 accounts of the authority and file copies of the audit with  
3 the governor and the legislature.

4

5 (d) The authority shall require that any project  
6 owner receiving a loan under this chapter shall maintain  
7 records and accounts relating to the receipt and  
8 disbursements of loan proceeds, costs associated with the  
9 agricultural processing facility or agricultural processing  
10 project and sales and deliveries associated therewith and  
11 make the records available to the state auditor for  
12 inspection.

13

14 (e) The sole recourse of any party contracting with  
15 the authority shall be against the authority, and there  
16 shall be no cause of action against the state, or any  
17 county, municipality or other political subdivision of the  
18 state.

19

20 **Section 2.** W.S. 9-4-715(n)(intro) is amended to read:

21

22 **9-4-715. Permissible investments.**

23

1           (n) The state treasurer shall not invest state funds  
2 for a specific public purpose authorized or directed by the  
3 legislature in excess of a total of one billion dollars  
4 (\$1,000,000,000.00), excluding investments made pursuant to  
5 W.S. 11-52-205, 37-5-406 or 37-5-605. By November 1 of  
6 each calendar year, the state treasurer, in consultation  
7 with the board, the Wyoming water development office, the  
8 Wyoming business council and the office of state lands and  
9 investments, shall provide a report to the select committee  
10 on capital financing and investments and the investment  
11 funds committee on all state funds invested for a specific  
12 public purpose authorized or directed by the legislature.  
13 The report shall include:

14

15           **Section 3.** The board of the Wyoming agricultural  
16 authority shall be appointed and shall meet not fewer than  
17 two (2) times between July 1, 2021 and July 1, 2022. The  
18 board shall take all actions necessary to implement the  
19 powers of the authority from July 1, 2021 to July 1, 2022.  
20 The Wyoming department of agriculture shall provide  
21 administrative support for the board.

22

1           **Section 4.** There is appropriated twenty thousand  
2 dollars (\$20,000.00) from the general fund to the Wyoming  
3 department of agriculture for administrative expenses  
4 incurred by the authority in implementing this act. This  
5 appropriation shall be for the period beginning with the  
6 effective date of this act and ending June 30, 2022. This  
7 appropriation shall not be transferred or expended for any  
8 other purpose and any unexpended, unobligated funds  
9 remaining from this appropriation shall revert as provided  
10 by law on June 30, 2022.

11

12           **Section 5.** This act is effective July 1, 2021.

13

14

(END)



## WYOMING LEGISLATIVE SERVICE OFFICE

# Memorandum

**DATE** August 19, 2020

**TO** Joint Agriculture, State and Public Lands & Water Resources

**FROM** Kayla Spencer, Staff Attorney

**SUBJECT** Meat Processing Authority bill draft

This memo accompanies 21LSO-0004, Wyoming meat processing authority, a bill draft that creates a meat processing authority (Authority) in the state of Wyoming, modeled after the Wyoming Energy Authority. The Authority has power to issue bonds up to one billion dollars for a variety of reasons including to help finance meat processing projects, build facilities or purchase equipment. The Authority is created as a body politic and corporate, operating as an instrumentality of the state. The bill raises a few possible constitutional concerns as well as questions related to the public purpose doctrine, which are highlighted in this memo. The bill was drafted to address those concerns to the greatest extent possible while achieving the stated goals of the legislation, but it is uncertain how a court may rule if the Authority is challenged.

In the case of *Witzenburger v. State*<sup>1</sup>, Wyoming Supreme Court heard a challenge to bonds issued by the Wyoming Community Development Authority (WCDA). Despite several critical differences between the bill draft and the facts of the case, the decision in *Witzenburger* provides a helpful framework to review the potential constitutional concerns.

In *Witzenburger*, one of the first things the Court discussed was what type of entity the WCDA was in order to determine which constitutional limitations applied. The Court held that, although the legislature endeavored to create the WCDA as a political subdivision, the legislature had in fact created "an agency or separate body corporate, as an instrumentality of the state"<sup>2</sup> "having all the characteristics of a state agency"<sup>3</sup>. The Court noted that the WCDA must abide by constitutional debt limitations of the state.<sup>4</sup>

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<sup>1</sup> 575 P.2d 1100 (Wyo. 1978).

<sup>2</sup> *Id.* at 1114.

<sup>3</sup> *Id.* at 1110.

<sup>4</sup> *Id.* at 1114-15

The enacting statutes for the Authority indicate that it is a "body politic and corporate operating as an instrumentality of the state of Wyoming"<sup>5</sup> Relying on the analysis in *Witzenburger*, it appears the Authority is subject to the state constitutional debt limitations and otherwise has the characteristics of a state agency.

### **Wyoming Constitution Article 16 Section 1 and Section 2**

Because the bill draft gives the Authority the ability to issue bonds it is important to note the Wyoming Constitution Article 16, sections 1 and 2<sup>6</sup>, provide a debt limitation and election requirement for state debt obligations. In determining whether the provisions are applicable to a bond issuance, the first question is whether the bond issuance creates a "debt" as the Constitution uses that term.

General obligation bonds are bonds which are payable from tax revenues. Under the constitutional provisions, general obligation bonds are a debt. Revenue bonds are bonds "payable solely from a limited and specifically defined revenue source, which may have no relation at all to the particular facility being financed, providing, at least, that tax revenues are not involved."<sup>7</sup> Revenue bonds do not constitute debt of the governmental entity in the Constitutional use of that term. The Wyoming Supreme Court has stated the principle thusly:

Generally speaking, revenue bonds are bonds issued by a state or a political subdivision in connection with the construction, maintenance, or operation of some enterprise or project, such as a publicly owned or operated utility, a bridge, or a dormitory for a state university, etc. The statutes under which the bonds are issued, and the terms and conditions in the bonds themselves, state clearly that they are payable solely from the income, revenue, or proceeds of the enterprise or project to acquire, build, or operate which they were issued. Hence, they are bonds payable from a special fund, are not the general obligations of the issuing public body, and are not payable from its general resources raised by taxation. Such bonds, payable from special nontax funds, and especially if they are payable only from the revenue

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<sup>5</sup> 21LSO-0004 v 0.3 page 4 lines 3-6.

<sup>6</sup> **Article 16, Section 1. Limitation on state debt.**

The State of Wyoming shall not, in any manner, create any indebtedness exceeding one per centum on the assessed value of the taxable property in the state, as shown by the last general assessment for taxation, preceding; except to suppress insurrection or to provide for the public defense.

**Article 16, Section 2. Creation of state debt in excess of taxes for current year.**

No debt in excess of the taxes for the current year, shall in any manner be created in the State of Wyoming, unless the proposition to create such debt shall have been submitted to a vote of the people and by them approved; except to suppress insurrection or to provide for the public defense.

<sup>7</sup> Rudolph, *Wyoming Local Government Law*, 1985, p. 280.

of the particular improvement to be acquired, constructed, or operated with the proceeds of such bond issue, are held, under the 'special fund doctrine,' not to create an indebtedness of the issuing body within the meaning of debt limit provisions.<sup>8</sup>

In the bill, the Authority is permitted to issue revenue bonds that are required to be "payable solely out of revenues authorized to be dedicated and pledged for the payment"<sup>9</sup>. The bill also provides that on the face of the bond there must be a recitation of the fact that the bonds do not constitute an obligation of the State.<sup>10</sup> While the recitation that the bonds are not state obligations is important, it is not dispositive in the face of factors to the contrary. For instance, in *Witzenburger* despite the fact that the bonds "shall bear a certificate endorsed thereon by the state treasurer that the same is issued pursuant to law and is not an indebtedness of the state."<sup>11</sup>, the Court found that certain bonds violated the constitutional provisions. The Court noted:

We are not bound by the legislative self-serving declaration that the bonds are not debts of the state if, in fact, such declarations and required certificates do not represent conditions that actually exist. The declaration of the Act is without effect, when it is clear from the legislation itself and those acts companion to it, a debt of the State is created. That could be approval of a nonexistent fact. We must look to the substance, not the form. Whether a statute authorizes a debt of the State contrary to constitutional curbs is a judicial question, rather than a legislative question. The notice on the bonds does not preclude a finding that as a matter of fact and as a matter of legislative fiat, future tax money is offered as security for and payment of revenue bonds, though reached in a round-about way: taxpayer to state treasury, to farm loan board, to county, city, town, sewer district, political subdivision or highway department, to Authority. The legislature cannot do indirectly what it cannot do directly. Our constitutional provisions, §§ 1 and 2, Article XVI, are explicit in their checks that the prohibited indebtedness not be created "in any manner."<sup>12</sup>

In *Arnold v. Bond*, the Wyoming Supreme Court found that bonds issued by the University of Wyoming did not involve general state tax revenues because the bonds were payable from revenues derived from the University's permanent land fund and thus did not create a state debt in violation of the constitution.<sup>13</sup> Similarly, in *Wyoming Farm Loan Bd. v. Herschler*, the Court

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<sup>8</sup> *Laramie Citizens for Good Government*, 617 P.2d 474 at 480 (quoting 64 AM. JUR. 2D, Public Securities and Obligations § 420).

<sup>9</sup> 21LSO-0004 v0.3 p 19 lines 1-2.

<sup>10</sup> *Id.* at p. 19 lines 4-6.

<sup>11</sup> 575 P.2d at 1116-17 (quoting then W.S. 9-836(b)).

<sup>12</sup> *Id.* at 117.

<sup>13</sup> 34 P.2d 28, 32-33 (Wyo. 1934).



upheld the issuance of revenue bonds guaranteed by federal mineral royalties because no state tax revenues were involved.<sup>14</sup>

Finally, it may also be important to note that the Wyoming Supreme Court has indicated that some circumstances can still cause constitutional concerns despite correctly crafted statutory language. The Court noted:

"[I]f the proposed loan were of such amount that as a result of it the legislature would practically be compelled to make up the payments under the loan by taxation in order that the university might be able to function as such in a reasonable way," then the constitutional provisions would likely be implicated.<sup>15</sup>

Because the Authority has power to issue bonds up to one billion dollars the above quote indicates that there may be some circumstances that might result in a Court finding that the legislature would be practically compelled to assist the Authority to ensure it would continue functioning. If that were to be the case, the constitutional provisions may be implicated.

The case law appears to lend support to the argument that the bonds are in fact revenue bonds and do not pledge tax monies for the payment. However, it is hard to predict how a court may rule if provisions are challenged.

### **Wyoming Constitution Article 16 Section 6**

The Committee should also be aware of Article 16 Section 6 of the Wyoming Constitution which provides that the State may not engage in works of internal improvement without submitting the question to a vote of the people and two-thirds of the people approving the same.<sup>16</sup> The

<sup>14</sup> 622 P.2d 1378 (Wyo. 1981).

<sup>15</sup> *Witzenburger*, 575 P. 2d at 1116 (quoting *Arnold v. Bond*, 34 P.2d 28, 33 (Wyo. 1934)) (internal citations omitted).

<sup>16</sup> Article 16, section 6 of the Constitution provides: Neither the state nor any county, city, township, town, school district, or any other political subdivision, shall loan or give its credit or make donations to or in aid of any individual, association or corporation, except for necessary support of the poor, nor subscribe to or become the owner of the capital stock of any association or corporation, except that funds of public employee retirement systems and the permanent funds of the state of Wyoming may be invested in such stock under conditions the legislature prescribes. **The state shall not engage in any work of internal improvement unless authorized by a two-thirds (2/3) vote of the people.**

It should be noted that this section is found in the Article of the Constitution dealing with public indebtedness. The significance being that perhaps the proper construction is that the provision only prohibits the expenditure of tax dollars to fund such projects. One text states the section "prohibits the state from funding public works projects except upon approval by a two-thirds vote." *The Wyoming State Constitution*, Keiter and Newcombe, p. 239 (1993) Addressing like provisions in other state constitutions, a treatise on taxation perhaps states the proposition more precisely, acknowledging the prohibition on engaging in works of internal improvement and stating, "[i]t follows that in those states where such improvements by the state are prohibited, taxes cannot be imposed by the state in furtherance of such improvements." *The Law of Taxation*, *Cooley*, section 193 (1924) In other words, the difference is whether

Constitution has been amended three times to authorize certain works without a vote: roads and highways (1916); works for conservation and utilization of water (1940); and airports and related facilities (1948).<sup>17</sup>

Neither the Constitution nor statute define "a work of internal improvement." While this section has been litigated, the language limiting the State from engaging in works of internal improvement has not been subject to judicial review in Wyoming. Constitutions of several states contain similar language. Exactly what are "internal improvements" might not be subject to uniform agreement, but generally it appears that those items which are used exclusively by the state in the performance of its governmental functions as a sovereign are not subject to the provision. All other works deemed important enough for the State to construct would be.<sup>18</sup> Thus state prisons, universities and the like are not subject to the provision, while state oil refineries and grain systems would be. It appears meat processing facilities, which are not generally considered governmental functions, might be deemed a work of internal improvement.

### **Conclusion**

There is no definitive answer under Wyoming Supreme Court precedent whether the bonds to be issued by the Authority are in fact revenue bonds and thus not debt as considered by the Constitution or whether meat processing facilities are a work of internal improvement and as such must be put to a vote of the people, but this memo should provide some information on the most likely constitutional concerns that may arise if the Authority is challenged in court.

---

the language both prohibits the state from directly engaging in the work and from using tax money to have the work accomplished, or only prohibits the state from using tax money to engage in the work. To reach the latter interpretation requires reading into the language words that are not in the provision. The "plain language" appears to support the earlier interpretation. As discussed in depth below, the Wyoming Supreme Court generally favors a "plain language" reading of statutes and constitutional provisions.

<sup>17</sup> None of the three provisions providing exceptions have been subject to judicial interpretation. The Wyoming State Constitution, Keiter and Newcombe, pp. 242-244 (1993).

<sup>18</sup> See, The Law of Taxation, Cooley, section 193 (1924).

**DRAFT ONLY  
NOT APPROVED FOR  
INTRODUCTION**

HOUSE BILL NO. [BILL NUMBER]

Wyoming agricultural commodities authority.

Sponsored by: Joint Agriculture, State and Public Lands &  
Water Resources Interim Committee

A BILL

for

1 AN ACT relating to agriculture and livestock; establishing  
2 the Wyoming agricultural commodities authority; specifying  
3 duties and powers of the authority; establishing a board  
4 for the authority; providing legislative findings;  
5 providing for financing of authority projects as specified;  
6 providing rulemaking authority; and providing for an  
7 effective date.

8

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

10

11 **Section 1.**

12

1 W.S. 11-52-101 through 11-52-207 are created to read:

2

3 CHAPTER 52 - WYOMING AGRICULTURAL COMMODITIES AUTHORITY

4

ARTICLE 1 - IN GENERAL

5

6 **11-52-101. Definitions.**

7

8 (a) As used in this article:

9

10 (i) "Authority" means the Wyoming agricultural  
11 commodities authority;

12

13 (ii) "Board" means the board of the Wyoming  
14 agricultural commodities authority;

15

16 (iii) "Bonds" means notes, warrants, bonds,  
17 temporary bonds and anticipation notes issued by the  
18 authority under this chapter;

19

20 (iv) "Meat" means any product from the edible  
21 part of clean, sound striated muscle of cattle, swine,  
22 sheep, goat, turkey, duck, ratite and chicken, deer and  
23 other cervids, slaughtered in accordance with state and

1 federal law, and with or without the accompanying and  
2 overlying fat, sinew, nerve, gland and blood vessels that  
3 normally accompany the muscle tissues and which are not  
4 separated from it in the process of dressing. "Meat" shall  
5 not include items associated with the nervous system of  
6 beef cattle that are prohibited from human food and  
7 consumption as defined by federal law and regulation;

8

9 (v) "Meat processing" means the slaughtering or  
10 butchering of livestock for the preparation or processing  
11 of meat or meat products for commercial sale and for human  
12 consumption and shall include canning, salting, stuffing,  
13 rendering, boning, cutting up or otherwise manufacturing  
14 meat or meat products for commercial sale and for human  
15 consumption. Meat processing does not mean the processing  
16 of wild game;

17

18 (vi) "Meat processing facility" means any  
19 facility where meat processing occurs;

20

21 (vii) "Meat processing project" means any project  
22 related to or involving meat processing and any project  
23 included within W.S. 11-52-104(a) (iv).

1

2           **11-52-102. Wyoming agricultural commodities authority**  
3 **created; limitation on civil actions; report.**

4

5           (a) Commencing July 1, 2022, there is created the  
6 Wyoming agricultural commodities authority, which is a body  
7 politic and corporate operating as an instrumentality of  
8 the state of Wyoming, with authority to adopt an official  
9 seal and to sue and be sued.

10

11           (b) The authority shall be governed by a board  
12 composed of seven (7) voting members appointed by the  
13 governor, with the advice and consent of the senate. Except  
14 as provided in this subsection, all voting members shall be  
15 appointed for four (4) year terms. The governor shall  
16 appoint four (4) initial voting board members to a term of  
17 four (4) years and shall appoint the remaining three (3)  
18 initial voting board members to a term of two (2) years.  
19 The governor may remove any member as provided in W.S. 9-1-  
20 202. Vacancies shall be filled by appointment by the  
21 governor in accordance with W.S. 28-12-101. The members  
22 shall elect from the membership a chairman, vice-chairman  
23 and secretary. A majority of the persons appointed and

1 serving as members shall be qualified voters of the state  
 2 of Wyoming. A majority of members shall have special  
 3 knowledge, education or experience in the field of meat  
 4 processing. Voting members of the board shall be engaged  
 5 chiefly in agricultural work. As used in this section  
 6 "agricultural work" means work relating to the science, art  
 7 and business of cultivating soil, producing crops and  
 8 raising livestock. Members of the board may receive the  
 9 same per diem, expenses and travel allowance as members of  
 10 the legislature under W.S. 28-5-101 while in attendance at  
 11 meetings of the board and while performing their duties as  
 12 members of the board.

13

14 \*\*\*\*\*  
 15 **STAFF COMMENT**

16  
 17 **Similar to the Energy Authority, the composition of voting**  
 18 **members contemplates that up to one-half can be from**  
 19 **outside of Wyoming. If there is a preference to have all**  
 20 **voting members be from Wyoming, the following sentences**  
 21 **could be used instead of the residence sentence above:**

22  
 23 **"Voting members shall be appointed from each of the seven**  
 24 **(7) appointment districts pursuant to W.S. 9-1-218.**  
 25 **Appointments in each appointment district shall be rotated**  
 26 **among the several counties comprising the district."**

27  
 28 \*\*\*\*\*  
 29

1 (c) The following members shall serve as ex officio  
2 members of the board:

3

4 (i) The governor or a designee from his office;

5

6 (ii) The director of the department of  
7 agriculture or his designee;

8

9 (iii) The dean of the University of Wyoming  
10 college of agriculture or his designee;

11

12 (iv) The chief executive officer of the Wyoming  
13 business council or his designee.

14

15 (d) The board shall meet not less than two (2) times  
16 each year to conduct its business and to consider issues  
17 related to meat processing and the livestock industry in  
18 Wyoming.

19

20 (e) The authority may request the assistance of any  
21 agency, board, commission, department or institution of the  
22 state and the governing authorities of political  
23 subdivisions to make surveys, reports and investigations,



1 furnish records, information and other assistance and  
2 advice upon mutually agreeable terms and conditions.

3

4 (f) Appointments and terms under this section shall be  
5 as provided in W.S. 28-12-101 through 28-12-103.

6

7 (g) The authority is subject to the requirements of:

8

9 (i) W.S. 16-3-101 through 16-3-105;

10

11 (ii) W.S. 16-4-201 through 16-4-205;

12

13 (iii) W.S. 16-4-401 through 16-4-408.

14

15 \*\*\*\*\*

16 **STAFF COMMENT**

17

18 **The three statutory references above are to the: (1)**  
19 **Administrative Procedure Act; (2) the Public Records Act;**  
20 **and (3) the Public Meetings Act.**

21 \*\*\*\*\*

22

23 (h) The sole recourse of any party contracting with  
24 the authority shall be against the authority, and there  
25 shall be no cause of action against the state or any  
26 county, municipality or other political subdivision of the  
27 state.

1

2 (j) The authority shall annually submit a  
3 comprehensive report of the programs, objectives,  
4 activities and condition covering the previous fiscal  
5 period to the joint agriculture, state and public lands &  
6 water resources committee.

7

8 **11-52-103. Purposes.**

9

10 (a) The authority is created to:

11

12 (i) Diversify and expand the Wyoming economy and  
13 its livestock industry through support for the meat  
14 processing industry in the state of Wyoming;

15

16 (ii) Coordinate strategies with the department of  
17 agriculture to improve meat processing facilities and  
18 capabilities, including:

19

20 (A) Assisting processors seek federal grants  
21 and loans;

22

1 (B) Increasing participation in applicable  
2 federal programs; and

3

4 (C) In accordance with applicable federal  
5 program guidelines, implementing, administering and  
6 expanding federally funded programs for meat processing and  
7 meat processing facilities in Wyoming.

8

9 **11-52-104. Powers of the authority.**

10

11 (a) The authority may:

12

13 (i) Employ officers, agents and employees as it  
14 deems necessary for the performance of its duties and  
15 prescribe the powers and duties and fix the compensation of  
16 the officers, agents and employees;

17

18 (ii) Contract, upon terms as it may agree upon,  
19 for legal, financial, engineering and other professional  
20 services necessary or expedient in the conduct of its  
21 affairs;

22

1           (iii) Utilize the services of executive agencies  
2 of the state upon mutually agreeable terms and conditions;

3

4           (iv) Provide loans, grants, technical assistance  
5 or expertise to assist producers plan, finance, construct,  
6 develop, acquire, own, lease, operate, maintain, modernize,  
7 upgrade or dispose, within and outside the state of  
8 Wyoming, meat processing facilities and all other property,  
9 structures, equipment, utilities and works of public  
10 improvement necessary or useful to facilitate the  
11 production, transportation, distribution and delivery of  
12 meat that is produced within or outside this state,  
13 including obtaining permits and acquiring necessary rights-  
14 of-way;

15

16           (v) Provide technical assistance and expertise to  
17 assist producers with permitting, siting and other  
18 regulatory requirements;

19

20           (vi) Receive by gift, grant, donation or  
21 otherwise, any sum of money, aid or assistance from the  
22 United States, the state of Wyoming, any political

1 subdivision or any other public or private entity to the  
2 extent permitted by law;

3

4 (vii) Provide technical assistance or expertise  
5 to assist producers acquire light, water, communications,  
6 security and other services for facilities as the authority  
7 deems advisable;

8

9 (viii) After consultation with any relevant state  
10 or federal authority, establish and collect fees, rates,  
11 tariffs or other charges and prepare a schedule of charges  
12 for all services rendered by the authority;

13

14 (ix) Investigate, plan and establish priorities  
15 for meat processing facilities in Wyoming;

16

17 (x) Engage with international and domestic  
18 stakeholders on potential market opportunities and meat  
19 processing projects to identify, develop and promote  
20 projects and market opportunities to increase the value of  
21 Wyoming livestock and meat;

22

1           (xi) Enter into partnerships with public or  
2 private entities;

3

4           (xii) Conduct hearings and gather and develop  
5 relevant data consistent with the duties and powers of the  
6 authority;

7

8           (xiii) Advocate for or against any meat  
9 processing project before any regulatory body tasked with  
10 the oversight of the project;

11

12           (xiv) Develop and administer programs to educate  
13 producers and the public on meat processing and the Wyoming  
14 livestock industry including tours, academic programs and  
15 communication plans;

16

17           (xv) Do any and all things necessary or proper  
18 for the development, regulation and accomplishment of the  
19 purposes of the authority within the limitations of  
20 authority granted by this article.

21

1           (b) Any producer receiving assistance from the  
2 authority shall comply with all applicable state and  
3 federal regulations.

4

5           (c) The authority may borrow funds for the execution  
6 of the purposes of the authority, and mortgage and pledge  
7 any contracts granted, assigned or subleased by the  
8 authority.

9

10          (d) Except as provided in this section, the authority  
11 shall not exercise any of the rights or powers granted to  
12 it in this section if private persons, firms or  
13 corporations are performing the acts, constructing or have  
14 constructed the facilities or are providing the services  
15 contemplated by the authority.

16

17          (e) Before exercising any rights or powers granted to  
18 it in this section, the authority shall publish in a  
19 newspaper of general circulation in Wyoming, and in a  
20 newspaper in the area where the authority contemplates  
21 providing financing or services, in the manner prescribed  
22 by law, a notice describing the acts or services  
23 contemplated by the authority. Private persons, firms or

1 corporations wishing to perform the acts, construct the  
2 facilities or provide the services described in the notice  
3 shall have ninety (90) days from the date of last  
4 publication of the notice within which to notify the  
5 authority of their intention to perform the acts or provide  
6 the services described in the notice. A person or entity  
7 giving notice to the authority shall include an anticipated  
8 timeline for completion of the acts or services. In the  
9 absence of notification by a private person, firm or  
10 corporation, or if a person, firm or corporation, having  
11 given notice of intention to perform the acts or provide  
12 the services contemplated by the authority, fails to  
13 commence the same within one hundred eighty (180) days from  
14 the date of last publication, the authority may proceed to  
15 perform the acts, or provide the services for which notice  
16 was given. A private person, firm or corporation that has  
17 made necessary applications to acquire any federal, state,  
18 local or private permits, certificates or other  
19 authorizations necessary to perform the acts or provide the  
20 services included in the authority's notice within the time  
21 required is deemed to have commenced the same. When a  
22 private person, firm or corporation has given notice of  
23 intent to perform or is performing the acts or providing



1 the services that the authority contemplated, the authority  
2 may conduct hearings or meetings with the person, firm or  
3 corporation to assess progress toward completion of the  
4 intended acts to be performed or the services to be  
5 provided. If it appears to the authority that progress or  
6 completion of any or all of the intended acts or services  
7 may be delayed for one (1) year or more, the authority may  
8 proceed to perform the acts or provide the services  
9 originally contemplated.

10

11 (f) the authority shall promulgate rules to carry out  
12 the provisions of this chapter.

13

14 **11-52-105. Authority loan and grant program.**

15

16 (a) The authority shall establish and administer a  
17 loan and grant program under this chapter and may contract  
18 for necessary professional services. Loans and grants  
19 authorized under the program shall not exceed five hundred  
20 thousand dollars (\$500,000.00) per project. Any person may  
21 submit an application to the authority to participate in  
22 the program on forms prescribed by and subject to rules  
23 promulgated by the authority.

1

2           (b)       The authority shall establish all fees and  
3 interest rates to be charged for each loan as it is  
4 underwritten for this program. The interest rate for loans  
5 made under this program shall be not less than three  
6 percent (3%) per annum. Fees on loans under the program  
7 shall be paid monthly and deposited into a program  
8 administration account which is continuously appropriated  
9 to the authority to be expended solely for the purpose of  
10 administering this chapter and loans and grants authorized  
11 under it.

12

13           (c)       Grants may be awarded by the authority to provide  
14 funding to producers to create, maintain or expand  
15 infrastructure for meat processing facilities that will  
16 increase capacity for meat processing in the state. The  
17 authority shall establish requirements for grants awarded  
18 under this subsection.

19

20           **11-52-106. Confidential information.**

21

22 All information obtained by the authority in connection  
23 with any hearing or investigation under this article that

1 contains or that might reveal proprietary data shall be  
2 considered as confidential for the purposes of this  
3 article. The authority shall not disclose confidential  
4 information to any person, governmental entity or agency  
5 without prior written consent from the owner of the  
6 confidential information. Any board or staff member who  
7 discloses or causes to be disclosed any confidential  
8 information is guilty of a misdemeanor punishable by  
9 imprisonment for not more than one (1) year, a fine of not  
10 more than one thousand dollars (\$1,000.00), or both.

11

12

## ARTICLE 2

13

## PROJECT FINANCING ASSISTANCE

14

15 **11-52-201. Legislative findings; applicability.**

16

17 (a) The legislature finds that:

18

19 (i) Beginning when Wyoming was only a territory,  
20 the livestock industry has been an integral part of  
21 Wyoming's economy and agricultural heritage;

22

1           (ii) Because of market conditions, both in  
2 Wyoming and across the nation, producers are facing  
3 challenges getting livestock to meat processing facilities  
4 in a timely, efficient and cost-effective manner;

5  
6           (iii) Timely development of meat processing  
7 facilities in Wyoming will help increase revenue to the  
8 state;

9  
10           (iv) New infrastructure for meat processing will  
11 increase development of Wyoming's livestock industry;

12  
13           (v) It is in the public interest of the citizens  
14 of this state to promote the economic welfare of the state  
15 and its residents by increasing employment, stimulating  
16 economic activity, augmenting sources of tax revenue,  
17 fostering economic stability, improving the balance of the  
18 state's economy and enhancing the food supply chain to  
19 ensure adequate quantities of wholesome foods are  
20 available;

21  
22           (vi) This article constitutes a valid public  
23 purpose of primary benefit to all citizens of this state.

1

2           **11-52-202. Authority revenue bonds; issuance; amount.**

3

4           (a) The authority may issue and have outstanding bonds  
5 to finance meat processing facilities and meat processing  
6 projects consistent with the purposes of W.S. 11-52-103(a),  
7 in an amount not to exceed ten million dollars  
8 (\$10,000,000.00). The authority shall have contracts  
9 sufficient to justify the issuance of bonds.

10

11           (b) The principal amount of any bonds that have been  
12 retired, redeemed, defeased or refunded by the authority  
13 need not be taken into account in computing compliance with  
14 the maximum amounts of bonds authorized to be issued under  
15 subsection (a) of this section.

16

17           (c) Subject to subsection (a) of this section, the  
18 authority may issue bonds in principal amounts the  
19 authority determines necessary to provide sufficient funds  
20 for achieving its purposes under this article, including  
21 the reduction of principal, the payment of interest, the  
22 establishment of reserves, the costs of administration and  
23 for the purpose of defraying all other associated costs.

1 All bonds issued under this article are negotiable  
2 instruments under the laws of this state unless expressly  
3 provided to the contrary on the face of the bonds. The  
4 authority may enter into contracts to insure the payment of  
5 principal and interest, for interest rate exchange  
6 contracts and for financial guarantees to lower the cost of  
7 its borrowing.

8

9 (d) All bonds issued by the authority are payable  
10 solely out of special funds consisting of all or part of  
11 its revenues, receipts, monies and assets, as designated in  
12 the proceedings under which the bonds are authorized. All  
13 bonds shall bear interest at fixed or variable rates, be  
14 executed and delivered at times and in denominations, be of  
15 terms and maturities, be in registered form as to principal  
16 and interest or principal alone and bear manual or  
17 facsimile signatures and seals as the authority determines.  
18 Bonds issued by the authority are not general obligations  
19 of this state nor of any political subdivision of this  
20 state. The bonds shall solely be the obligation of the  
21 authority and shall recite on their face that they do not  
22 constitute obligations of the state or any political  
23 subdivisions of the state.

1

2 (e) Bonds may be payable in installments and may bear  
3 maturities not exceeding forty (40) years from the date  
4 issued as the authority determines. Bonds may contain other  
5 provisions not inconsistent with this article.

6

7 (f) Any bonds that the authority issues may contain  
8 an option to redeem all or any part as may be specified.  
9 The price of redemption, the terms and conditions and the  
10 procedure of notice shall be set forth by the authority and  
11 may appear on the face of the bonds.

12

13 (g) Any bonds of the authority may be sold at, above  
14 or below par value, at public or private sale, in a manner  
15 and from time to time as determined by the authority. The  
16 authority may pay legal fees, expenses, premiums and  
17 commissions that it finds necessary or advantageous to this  
18 state in connection with the issuance and sale.

19

20 (h) The authority may provide for the issuance of  
21 bonds to refund any bonds of the authority then  
22 outstanding, including for the payment of any redemption  
23 premium and any interest or premium accrued or to accrue

1 to, the earliest or subsequent date of redemption, purchase  
2 or maturity of the bonds. Refunding shall be accomplished  
3 in the manner prescribed by W.S. 16-5-101 through 16-5-119  
4 to the extent it is not inconsistent with this article.

5

6 **11-52-203. Authority revenue bonds; security; payments**  
7 **after retirement.**

8

9 (a) The principal and interest on any bonds that the  
10 authority issues shall be secured by a pledge of revenues  
11 from the operation of the meat processing facility or meat  
12 processing project financed, by a first mortgage on the  
13 facilities, by guarantees and pledges of the entity owning  
14 the project or facility, or of the parent corporation  
15 owning said entity or by any combination thereof or other  
16 security as the authority may determine to be reasonable  
17 and prudent. The guarantees and pledges shall be no less  
18 favorable to the authority than those granted other lenders  
19 of the same class.

20

21 (b) The authority may require additional payments, as  
22 negotiated, to bondholders to be made either in a lump sum  
23 at the time of retirement of the bonds or annually from the



1 time of retirement of the bonds until use of the meat  
2 processing facility or meat processing project is  
3 terminated or may require additional incentives from the  
4 owner of the project or facility to prospective bondholders  
5 so long as the incentives are not contrary to the Wyoming  
6 constitution.

7

8 (c) The authority may require such other security for  
9 repayment of the bonds as it deems necessary.

10

11 (d) Each pledge, agreement, mortgage or other  
12 instrument made for the benefit or security of any bonds of  
13 the authority is valid and binding from the time when made.  
14 The revenues, receipts, monies and assets pledged are  
15 immediately subject to the lien of the pledge without  
16 delivery or further act. The lien is valid and binding  
17 against persons having claims of any kind against the  
18 authority whether or not the persons have actual notice of  
19 the lien. The resolution or the indenture or other  
20 instrument by which a pledge is created need not be  
21 recorded or filed.

22

23 **11-52-204. Exemptions from taxation.**

1

2 The exercise of the powers granted by this article  
3 constitutes the performance of an essential governmental  
4 function. Any bonds issued under this article and the  
5 income therefrom shall be free from taxation of every kind  
6 by the state, municipalities and political subdivisions of  
7 the state.

8

9 **11-52-205. Bonds as legal investments.**

10

11 The bonds of the authority are legal investments that may  
12 be used as collateral for public funds of the state,  
13 insurance companies, banks, savings and loan associations,  
14 investment companies, trustees and other fiduciaries that  
15 may properly and legally invest funds in their control or  
16 belonging to them in bonds of the authority. With the  
17 written approval of the state loan and investment board and  
18 the attorney general, the state treasurer may invest monies  
19 from the permanent Wyoming mineral trust fund in bonds of  
20 the authority in an amount specified by the state loan and  
21 investment board and the attorney general but not to exceed  
22 the amount specified in W.S. 11-52-202(a). The interest  
23 payable on the bonds shall be not less than four percent

1 (4%), and revenue under W.S. 11-52-202(a) shall be credited  
2 as received to the general fund. The limitation on specific  
3 public purpose investments under W.S. 9-4-715(n) shall not  
4 apply to investments made under this section.

5

6 **11-52-206. State pledge not to impair bondholder's**  
7 **rights and remedies.**

8

9 The state pledges to the holders of any bonds issued under  
10 this article that the state will not limit or alter the  
11 rights vested in the authority to fulfill the terms of  
12 agreements made with the holders, or in any way impair the  
13 rights and remedies of the holders until the bonds together  
14 with the interest, with interest on any unpaid installments  
15 of interest and all costs and expenses in connection with  
16 any action or proceeding by or on behalf of the holders are  
17 fully met and discharged. The authority is authorized to  
18 include this pledge of the state in any agreement with the  
19 holders of the bonds.

20

21 **11-52-207. Powers; duties; limitations.**

22

1           (a) The authority has the powers granted by W.S. 11-  
2 52-101 through 11-52-106 as necessary to carry out the  
3 purposes of this article, including the power to hire  
4 technical consultants, financial advisors and legal  
5 advisors and specifically the powers granted by W.S. 11-52-  
6 104(a)(ii). In addition to the powers otherwise granted to  
7 the authority, the authority shall have the power to:

8  
9           (i) Enter into loans or other agreements with  
10 respect to one (1) or more meat processing projects or  
11 projects for meat processing facilities, upon terms and  
12 conditions the authority considers advisable;

13  
14           (ii) Make and execute agreements, contracts and  
15 other instruments necessary or convenient in the exercise  
16 of its powers and functions, including contracts with any  
17 individual, firm, corporation, governmental agency or other  
18 entity.

19  
20           (b) The authority may assess and collect fees that are  
21 nonrefundable from applicants seeking to obtain authority  
22 financing of a meat processing facility or meat processing  
23 project in total amounts not to exceed five hundred

1 thousand dollars (\$500,000.00), which shall be credited to  
2 the state general fund.

3

4 (c) The authority shall maintain such records and  
5 accounts of revenues and expenditures as required by the  
6 director of the state department of audit. The director of  
7 the state department of audit or his designee shall conduct  
8 an annual financial and legal compliance audit of the  
9 accounts of the authority and file copies of the audit with  
10 the governor and the legislature.

11

12 (d) The authority shall require that any project  
13 owner receiving a loan under this chapter shall maintain  
14 records and accounts relating to the receipt and  
15 disbursements of loan proceeds, costs associated with the  
16 meat processing facility or meat processing project and  
17 sales and deliveries associated therewith and make the  
18 records available to the state auditor for inspection.

19

20 (e) The sole recourse of any party contracting with  
21 the authority shall be against the authority, and there  
22 shall be no cause of action against the state, or any

1 county, municipality or other political subdivision of the  
2 state.

3

4 **Section 2.** W.S. 9-4-715(n) (intro) is amended to read:

5

6 **9-4-715. Permissible investments.**

7

8 (n) The state treasurer shall not invest state funds  
9 for a specific public purpose authorized or directed by the  
10 legislature in excess of a total of one billion dollars  
11 (\$1,000,000,000.00), excluding investments made pursuant to  
12 W.S. 37-5-406, ~~or 37-5-605~~ or 11-52-205. By November 1 of  
13 each calendar year, the state treasurer, in consultation  
14 with the board, the Wyoming water development office, the  
15 Wyoming business council and the office of state lands and  
16 investments, shall provide a report to the select committee  
17 on capital financing and investments on all state funds  
18 invested for a specific public purpose authorized or  
19 directed by the legislature. The report shall include:

20

21 **Section 3.** This act is effective July 1, 2021.

22

23

(END)