DRAFT ONLY
NOT APPROVED FOR INTRODUCTION

HOUSE BILL NO.

Wyoming business council-program amendments and repeal.

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

A BILL

for

AN ACT relating to the administration of the government; amending the functions, duties and requirements of the Wyoming business council; amending requirements and standards for programs administered by the Wyoming business council; repealing programs of the Wyoming business council as specified; transferring specified functions of the Wyoming business council as specified; prohibiting actions related to the eliminated programs as specified; repealing accounts; specifying the disposition of funds allocated to or held for the eliminated programs; making conforming amendments; requiring reports; specifying applicability; and providing for effective dates.

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

Section 1.

(a) The following programs of the Wyoming business council are repealed effective July 1, 2027:

(i) The science, technology and energy financial aid functions assumed under W.S. 9-12-201 and 9-12-202;

(ii) The partnership loans to community development organizations and state development organizations under W.S. 9-12-302;

(iii) The Wyoming main street loan participation program specified in W.S. 9-12-304(g);

(iv) The natural gas fueling infrastructure loan program specified in W.S. 9-12-304(h);

(v) The large project loan program specified in W.S. 9-12-308;

(vi) The Wyoming community facilities program created in W.S. 9-12-801 through 9-12-804;

(vii) The Wyoming workforce housing infrastructure program created in W.S. 9-12-901 through 9-12-905;

(viii) The Wyoming small business investment credit program created in W.S. 9-12-1301 through 9-12-1312.

(b) The following accounts are hereby repealed effective July 1, 2027:

(i) The large project account within the revolving investment fund specified in W.S. 9-12-308(a);

(ii) The brownfield revolving loan fund (fund 098);

(iii) The community facilities program account created in W.S. 9-12-804;

(iv) The workforce housing infrastructure program account created in W.S. 9-12-905;

(v) The economic diversification account created in W.S. 9-12-1404(a). For purposes of this paragraph, the subaccounts created in W.S. 9-12-1404(a)(i) through (v) shall continue as separate accounts as provided for in section 3 of this act.

(c) On July 1, 2027, all unexpended, unobligated funds in the accounts and funds specified in subsection (b) of this section shall revert to the general fund, except as provided in subsection (d) of this section.

(d) On July 1, 2027, all unexpended, unobligated funds in the large project account within the revolving investment fund specified in W.S. 9-12-308(a) shall revert to the revolving investment fund created pursuant to article 16, section 12 of the Wyoming constitution.

Section 2.

(a) The following shall apply to the programs specified for elimination in section 1(a) of this act:

(i) No plan of reorganization under W.S. 9-2-1707(a)(iii) for the elimination of the programs specified in section 1(a) of this act shall be required;

(ii) Beginning on the effective date of this section, the Wyoming business council shall:

(A) Not accept any new applications for grants, loans, bonds or other funding for the programs specified in section 1(a) of this act;

(B) Not process any pending applications for grants, loans, financial aid, bonds or other funding for the programs specified in section 1(a) of this act;

(C) Not approve any grants or financial aid or disburse any funds for financial aid or grants or applications for the programs specified in section 1(a) of this act that are not approved or executed before the effective date of this section. For purposes of this

subparagraph, the business council may disburse grant funds and financial aid encumbered or obligated before the effective date of this section;

(iii) Not approve any loans or bonds or disburse any funds for loans or bonds for the programs specified in section 1(a) of this act that are not approved or executed before the effective date of this section;

(iv) Not encumber or obligate funds from any of the accounts or funds specified in section 1(b) of this act or for any of the programs specified in section 1(a) of this act;

(v) Take all actions necessary to effectuate this act and wind up all activities of the programs specified in section 1(a) of this act not later than July 1, 2027, subject to subsection (b) of this section.

(b) Nothing in this section shall be construed to:

(i) Affect the administration of any grants, loans, bonds, financial aid or other funds disbursed for

the programs specified in section 1(a) of this act or from the accounts repealed in section 1(b) of this act before the effective date of this section;

(ii) Impair any existing contracts, agreements or other obligations of the Wyoming business council for the programs specified in section 1(a) of this act or using funds from the accounts specified in section 1(b) of this act executed before the effective date of this section.

(c) Not later than October 1, 2027, the Wyoming business council shall report to the joint appropriations committee and the joint minerals, business and economic development interim committee on:

(i) The amount of funds from each of the accounts specified in section 1(b) of this act that reverted to the general fund in accordance with section 1(c) of this act;

(ii) The amount of funds from the large project account within the revolving investment fund that reverted to the revolving investment fund created pursuant to

article 16, section 12 of the Wyoming constitution in accordance with section 1(d) of this act;

(iii) All remaining obligations and encumbrances of the programs and accounts specified in section 1 of this act that were made before the effective date of this section and that remain outstanding as of July 1, 2027.

Section 3. W.S. 9-1-202(a), 9-2-2601(d), 9-2-2610(a)(xii) and (xvi), 9-2-2611(a), (c), (m) and (o)(ii), 9-12-102(a)(viii), 9-12-103(a) and (f), 9-12-105(b)(intro), (c)(intro) and (i)(C) and (d)(intro), (i)(C) and (E)(I), (ii)(intro), (iv)(intro) and (v)(intro), 9-12-109(a), 9-12-112(a)(ii)(intro), 9-12-302(a), 9-12-304(b)(i)(A), 9-12-305, 9-12-306(b), 9-12-601(b) and (k)(i) and (ii), 9-12-1102(a), 9-12-1103(a)(ii), 9-12-1104 by creating a new subsection (d), 9-12-1404(a)(intro), (i), (ii)(intro), (iii)(intro), (iv) and (v) and (b), 9-12-1405(a) and (b)(intro), 9-12-1501(b), 9-12-1509(c) and 10-7-103(c)(ii) are amended to read:

9-1-202. Removal of appointive officers and commissioners; reason for removal to be filed.

(a) Notwithstanding any other provision of law and except as otherwise provided in this section, any person may be removed by the governor, at the governor's pleasure, if appointed by the governor to serve as head of a state agency, department or division, or as a member of a state board or commission. The governor may only remove a ~~member~~ director of the Wyoming business council as provided in W.S. 9-12-103.

9-2-2601. Department of workforce services; duties and responsibilities; agreements with other agencies authorized; definition; merger with department of employment.

(d) The department shall administer expenditures from the workforce development training fund as provided in W.S. 9-2-2604. The department shall administer expenditures from the Wyoming workforce development-priority economic sector partnership ~~subaccount within the economic diversification~~ account as provided in W.S. 9-2-2609 through 9-2-2611 and 9-12-1404.

9-2-2610. Definitions.

(a) As used in this act:

(xii) "Priority economic sector business" means an employer engaged in establishing or expanding operations within a priority economic sector identified ~~in the twenty (20) year comprehensive economic diversification strategy approved~~ by the governor ~~pursuant to W.S. 9-12-1402~~ or the Wyoming business council in Wyoming that through the employment of knowledge or labor add value to a product, process or export service that results in the creation of new wealth;

(xvi) "Wyoming workforce development-priority economic sector partnership ~~subaccount~~ account" or ~~"subaccount"~~ "account" means the ~~subaccount~~ account created in W.S. 9-12-1404(a)(iii);

9-2-2611. Priority economic sector business workforce training programs; eligibility.

(a) The department~~, in consultation with the coordinator of economic diversification~~ shall administer the Wyoming workforce development-priority economic sector partnership program. Using available monies within the Wyoming workforce development-priority economic sector partnership ~~subaccount~~ account, the department may contract to provide training funds for education or skills based training for employees for priority economic sector businesses in new jobs. The funds shall be provided to eligible training providers in accordance with contracts between the department, priority economic sector business employers and eligible training providers, for the purpose of providing employees with education and training required for jobs in new or expanding priority economic sector businesses in the state.

(c) An applicant shall provide a match of at least one dollar ($1.00) for every one dollar ($1.00) requested from the ~~subaccount~~ account. The match may include new loans and investments and expenditures for direct project related costs such as new equipment and buildings. The department may consider recent purchases of fixed assets directly related to the proposal on a case-by-case basis. A

purchase of fixed assets directly related to the proposed training activities that have been made within ninety (90) days after submission of the application may be considered eligible by the department.

(m) The Wyoming business council shall assist the department with review of information provided under paragraphs (h)(i) and (ii) of this section, as requested by the department. If the department determines that an applicant meets the criteria established in this section and has complied with the applicable procedures and review processes established by the department, the department may recommend funding for a priority economic sector business workforce development program and the disbursement of funds under contract to the eligible training provider. The recipient eligible training provider shall use funds received under the program in accordance with the provisions of the contract. No funding shall be provided for any program without the written opinion of the attorney general certifying the legality of the transaction and all documents connected therein. Upon recommendation of the department, certification by the attorney general, and approval by the governor or his designee, funding from the

Wyoming workforce development-priority economic sector partnership ~~subaccount~~ account may be distributed to the eligible training provider.

(o) The department shall:

(ii) Report annually to the joint appropriations committee on the expenditures made from the Wyoming workforce development-priority economic sector partnership ~~subaccount~~ account in the preceding fiscal year and the results of each partnership project's activities.

9-12-102. Definitions.

(a) As used in this act, the following terms have the following meanings, except where the context clearly indicates otherwise:

(viii) "This act" means W.S. 9-12-101 through ~~9-12-1509~~ 9-12-1510.

9-12-103. Wyoming business council; creation; composition; compensation; termination; meetings; surety bonds; fiscal control.

(a) There is created the Wyoming business council. The council is a body corporate operating as a state instrumentality operated solely for the public benefit. As such it shall have, and is hereby vested with, the powers and duties conferred in this chapter. Beginning March 1, 2022, it shall be governed by a board of directors consisting of thirteen (13) voting directors, appointed by the governor with the advice and consent of the senate. The governor shall be a member and cochairman of the board, but shall not vote. One (1) senator appointed by the president of the senate and one (1) representative appointed by the speaker of the house of representatives shall serve as nonvoting legislative liaisons to the council. The appointed directors shall have demonstrated leadership and business expertise. ~~An equal number of directors shall be appointed to initial terms of one (1), two (2) and three (3) years. Thereafter,~~ Directors shall serve for terms of three (3) years. No appointed director shall serve more than two (2) successive three (3) year terms. If a vacancy

occurs, the governor shall appoint a successor in accordance with W.S. 28-12-101. The governor may remove any board member he appoints for cause and shall remove any director who fails to attend three (3) consecutive regular meetings of the council. No appointed council member shall send a designee to attend a council meeting nor vote by proxy. The board shall select one (1) of its ~~members~~ directors to act as cochairman of the board. The board shall retain a chief executive officer. The chief executive officer serves at the pleasure of the board. All of the appointed directors shall be appointed at large and at least twelve (12) of the appointed directors shall be residents of Wyoming.

(f) The council may also form committees and advisory councils, which may include representatives who are not members of the board, to undertake more extensive study and discussion of the issues before the board. ~~The council shall form an advisory council for broadband development and designate a broadband coordinator in accordance with W.S. 9-12-1509.~~

9-12-105. Economic development services.

(b) The council~~, in consultation with the coordinator of economic diversification,~~ shall implement the "startup:Wyoming" program in priority economic sectors identified ~~in the approved twenty (20) year comprehensive economic diversification strategy under W.S. 9-12-1402(a)(iv)~~ by the council or the governor. The program shall:

(c) The council shall administer a "kickstart:Wyoming" program to provide funding to early stage ventures of Wyoming based entrepreneurs. Funding under this subsection shall be provided upon approval of the council. The council shall adopt rules for funding under this subsection. ~~in consultation with the coordinator of economic diversification.~~ Funding shall be in amounts ranging from five thousand dollars ($5,000.00) to ~~fifty thousand dollars ($50,000.00)~~ one hundred fifty thousand dollars ($150,000.00) and be provided under the following conditions:

(i) To individuals who reside in Wyoming and to business entities which are, or agree in writing to be,

headquartered in Wyoming and organized under the laws of the state of Wyoming and which:

(C) Agree to provide ~~a report~~ reports to the council on the progress to commercialize the service, product, concept, design or any other marketable asset developed with the assistance of the funds.

(d) The council shall administer a ~~small business innovation research~~ federal innovation matching program in accordance with this subsection. The program shall match federal funds approved for Wyoming based companies as provided in this subsection. The program shall be administered by the council. ~~in consultation with the University of Wyoming research office.~~ The following shall apply to the program under this subsection:

(i) To be eligible to receive funding, an entity shall:

(C) Have received funding under the federal small business innovation research program, ~~and~~ the small

business technology transfer ~~programs~~ program or any other federal innovation grant program;

(E) Agree to provide a report to the council on or before July 1 of each year in the following manner:

(I) ~~Prior to commercialization~~ For five (5) years after an award under this subsection, the entity shall report on the progress of the entity to commercialize the service, product, concept, design or any other marketable asset developed with the assistance of funds from this program. The report shall include, at a minimum, all of the following:

(1) The number of jobs the entity has created;

(2) A salary range per job;

(3) The taxable assets of the entity;

(4) All revenues from sales of the service, product, concept, design or any other marketable asset of the entity;

(5) Progress to commercialization, including proposed timelines.

(ii) Matching funds shall be awarded to recipients as determined by the council in an amount not to exceed~~:~~ one hundred percent (100%) of the federal grant award.

(iv) An entity shall repay all matching funds provided under this subsection plus interest at the rate of four percent (4%) per annum compounded annually from the date the matching funds were granted through the ending date of the grant agreement. The council may, through the grant agreement or other contract require repayment from an entity if:

(v) The council shall adopt rules for the program. ~~in consultation with the coordinator of economic~~

~~diversification.~~ The rules shall include but not be limited to:

9-12-109. Promotion of agriculture; financing of agriculture processing projects; revenue bonds.

(a) The council shall encourage and promote the development of agriculture in the state including horticulture, apiculture, livestock, poultry, dairying and the kindred industries and including the development of new value-added agribusiness, agriculture innovation and technologies and product uses and markets for Wyoming agricultural products.

9-12-112. Annual report and budget.

(a) The council shall submit an annual report in the manner provided by W.S. 9-2-1014 and using the benchmarks prescribed in this act. In addition to the requirements of W.S. 9-2-1014, included within the annual report shall be:

(ii) A summary of the total investments made by the council ~~under~~ through the ~~Wyoming partnership challenge~~

~~loan program,~~ loans available under article 3 of this chapter, including:

9-12-302. Wyoming challenge loan program; creation; rulemaking; administration account.

(a) The council shall establish and administer a ~~partnership~~ challenge loan program under this article and may contract for necessary professional services. Loans authorized under the program shall be limited~~, except as otherwise provided under W.S. 9-12-304(c) through (k), to community development organizations and state development organizations~~ to the loans specified in W.S. 9-12-304(c), (d), (j) and (k) and made in accordance with the provisions of W.S. 9-12-304. ~~Any community development organization or state development organization may submit an application to the council to participate in the program on forms prescribed by and subject to rules promulgated by the council.~~

9-12-304. Criteria for loans.

(b) Loans, loan commitments or loan guarantees or any combination thereof shall be made under this article only:

(i) If the total amount to:

(A) A ~~single community development organization, or to a~~ business for an economic disaster loan as provided under subsection (c) of this section~~,~~ does not exceed one million dollars ($1,000,000.00);

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

Except for fees deposited in accordance with W.S. 9-12-302(b), all repayments of principal and interest to the state in connection with loans made under this article and other funds as appropriated by the legislature for the challenge loan program shall be deposited into the economic development enterprise account within the revolving investment fund. All funds in the account may be used for and are continuously appropriated for loans authorized to be made under this article. ~~Funds within the account may also be transferred upon direction of the governor to the~~

~~large project account within the revolving investment fund if required to meet loans or loan guarantees approved under W.S. 9-12-308.~~ The total principal balance of outstanding loans shall not exceed the amounts appropriated by the legislature plus interest accrued and collected less any losses of loan principal or interest.

9-12-306. Audit; report.

(b) On or before July 15 of each year, the council shall submit a written report to the joint minerals, business and economic development interim committee reviewing rules adopted by the council during the reporting period, presenting a portfolio of loans made under the program ~~and under W.S. 9-12-308~~ showing the number of jobs created as a result of loans in the portfolio including whether the jobs are permanent or temporary and presenting a risk analysis of the portfolio of loans prepared by the state banking commissioner. The report, portfolio of loans and risk analysis required under this subsection shall be public records. The risk analysis prepared by the state banking commissioner shall not be subject to the limitations of W.S. 9-1-512.

9-12-601. Wyoming business ready community program; purpose; creation; rulemaking.

(b) The council shall establish and administer a Wyoming business ready community program as provided by this article. Any city, town, county or the Eastern Shoshone or Northern Arapaho tribe, or the cooperative tribal governing body, may submit an application to the council for a grant or loan under the program on forms prescribed by and subject to rules promulgated by the council. Grants or loans may be applied for by a joint powers board with the approval of all participating agencies to the joint powers agreement. Grants and loans may be made by the council for economic or educational development, planning or infrastructure projects, including the purchase of land, buildings, facilities, telecommunications infrastructure, rights of way, airports, sewer and water projects, roads, landscaping, recreational and convention facilities or other infrastructure determined by the council to be consistent with the purposes of this article. In adopting rules and making grants and loans under this article the council shall

require all projects to be related to economic or educational development, planning or infrastructure, which shall not include rehabilitation or expansion of existing infrastructure unless the council determines the rehabilitation or expansion is necessary to meet the purposes of this article. Planning grants and loans shall be ~~limited as provided in subsection (m) of this section~~ available in accordance with this section. All grants or loans made under this article shall be referred by the council to the state loan and investment board for final approval or disapproval. The state loan and investment board may adopt rules as necessary to implement its duties under this article.

(k) As used in this article:

(i) "Community development organization" means ~~as defined by W.S. 9-12-301(a)(ii)~~ a group of private citizens organized as a business entity authorized to do business in this state for the purpose of providing financing for new, existing or expanding businesses and other economic or community development purposes throughout its community or county, and which may take equity

positions and shall take security positions in its borrowers' businesses and appropriate personal guarantees from the owners thereof;

(ii) "State development organization" means ~~as defined by W.S. 9-12-301(a)(iv)~~ a corporation organized under W.S. 17-11-101 through 17-11-120 with the authority to provide financing for new, existing or expanding businesses and to fulfill other economic or community development purposes throughout the state of Wyoming, and which may take equity positions and shall take security positions in its borrowers' businesses and appropriate personal guarantees from the owners thereof.

9-12-1102. Wyoming main street advisory board.

(a) There is created a Wyoming main street advisory board. The board shall consist of seven (7) members appointed by the governor.~~, not more than seventy-five percent (75%) of whom shall be from the same political party.~~ Board members shall elect from their membership a chairman, vice-chairman and secretary.

9-12-1103. Duties of the board.

(a) The board shall:

(ii) Assist the council in annually ~~review~~ reviewing the program and report findings and recommendations, including recommendations for future legislation, to the governor;

9-12-1104. Duties of the council; annual report.

(d) Not later than September 1 of each year, the council shall provide a comprehensive annual evaluation of the Wyoming main street program to the joint minerals, business and economic development interim committee. The report shall include findings and recommendations, including recommendations for future legislation.

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ARTICLE 14

ECONOMIC DIVERSIFICATION

9-12-1404. Economic diversification accounts created; authorized expenditures.

(a) ~~There is created an economic diversification account. All monies in the account are continuously appropriated to the office of the governor to be used for the purposes of this article and as otherwise specified by law, including per diem, mileage and other administrative expenses of the ENDOW executive council.~~ For purposes of economic diversification and development, the following accounts are created. Notwithstanding W.S. 9-2-1008 and 9-4-207, funds in ~~the~~ each account ~~or subaccounts of the account~~ shall not lapse at the end of the fiscal period. ~~Interest earned on funds in the account~~ The state treasurer shall invest funds in each account in accordance with law, and earnings on each account shall be deposited to the ~~account or~~ appropriate ~~subaccount~~ account. ~~Within the account shall be subaccounts. For accounting and~~

~~investment purposes only all subaccounts shall be treated as separate accounts.~~ The ~~subaccounts~~ accounts are as follows:

(i) The agriculture marketing ~~subaccount~~ account. Funds within this ~~subaccount~~ account may be expended as requested by the Wyoming business council and approved by the governor or his designee to provide funding for purposes of W.S. 9-12-109 and as specified by law;

(ii) The broadband development ~~subaccount~~ account. Funds within this ~~subaccount~~ account may be expended as requested by the Wyoming business council and approved by the governor or his designee to:

(A) Provide funding for agreements entered into pursuant to W.S. 9-12-1501 through 9-12-1510;

(B) Provide the state's share of any matching funds required for the state to receive federal funds under any federal broadband program including, but not limited to, the broadband equity, access and deployment

program established by the federal Infrastructure Investment and Jobs Act, P.L. 117-58; 135 Stat. 429;

(C) Pay the reasonable administrative expenses of the Wyoming business council in an amount not to exceed three hundred thousand dollars ($300,000.00).

(iii) The Wyoming workforce development-priority economic sector partnership ~~subaccount~~ account. Funds within this ~~subaccount~~ account may be expended:

(A) As approved by director of the department of workforce services for administrative costs incurred by the department of workforce services associated with administration of the Wyoming workforce development-priority economic sector partnership program under W.S. 9-2-2609 through 9-2-2611; and

(B) As approved by the governor or his designee to provide funding for agreements entered into pursuant to W.S. 9-2-2609 through 9-2-2611;

(iv) The Wyoming research and innovation ~~subaccount~~ account. Funds within this ~~subaccount~~ account may be expended as requested by the Wyoming business council and approved by the governor or his designee to provide funding for agreements entered into pursuant to W.S. 9-12-1405;

(v) The "startup:Wyoming" ~~subaccount~~ account. Funds within this ~~subaccount~~ account may be expended as requested by the Wyoming business council and approved by the governor or his designee to provide funding pursuant to W.S. 9-12-105(b) through (f).

(b) The ~~governor~~ council may accept, and shall deposit to the appropriate account, ~~or to the appropriate subaccount within the account,~~ any gifts, contributions, donations, grants or federal funds specifically designated for purposes of ~~this article or other ENDOW related program~~ the appropriate account or program for which funds from the account may be expended.

9-12-1405. Wyoming research and innovation program fund created; authorized expenditures from the fund; rulemaking.

(a) The council shall administer a Wyoming research and innovation program under which matching funds necessary to access federal research and development grant funds or other nonstate funds may be provided as specified in this section. To be eligible to receive funding under the program an entity shall present to the council its proposal to apply for or an existing application for an externally funded grant specific to a priority economic sector identified ~~in the approved twenty (20) year comprehensive economic diversification strategy under W.S. 9-12-1402(a)(iv)~~ by rule of the council. The entity shall demonstrate that further research funding from nonstate funds is likely to be provided if funding is provided under this section.

(b) The Wyoming business council, in consultation with ~~the ENDOW executive council and~~ the University of Wyoming, shall promulgate rules necessary to carry out the provisions of this section. The rules shall include but not

be limited to application procedures, eligibility requirements, the amount of funding which may be provided for any single project, provision for ensuring adequate consideration to the state in exchange for funding any project which does not solely involve a state agency or institution or political subdivision of the state, recapture of funding if the recipient of funds breaches any agreement under the program and prioritization for funding requests. In establishing provisions for adequate consideration to the state, the council may include, but is not limited to, assessment of the following:

9-12-1501. Broadband development program established; purposes; eligibility; definitions.

(b) Funds may be provided under this article for the acquisition, deployment and installation of infrastructure that supports broadband service at a minimum of at least ~~twenty-five (25)~~ one hundred (100) megabits per second download and ~~three (3)~~ twenty (20) megabits per second upload in residential areas and ~~nine hundred (900) megabits~~ one (1) gigabit per second download speed and thirty-five

(35) megabits per second upload speed in business corridors.

9-12-1509. Advisory council; broadband coordinator.

(c) The business council shall~~, in consultation with the ENDOW executive council and the governor's office,~~ designate an employee of the business council as coordinator of broadband services. The person designated shall have expertise in telecommunications and specifically in the provision of broadband services. ~~As directed by the business council, the coordinator shall staff the broadband advisory council.~~ The coordinator shall, with approval of the business council, accomplish the tasks set forth in paragraphs (b)(i) through (v) of this section and undertake other duties as assigned by the business council in consultation with the governor's office. The business council may contract with a consultant to provide services to ~~the broadband advisory council and to~~ the business council under this act.

10-7-103. Wyoming commercial air service improvement council; creation; transfer of rights, duties, obligations and liabilities.

(c) With the advice and consent of the commission and subject to the requirements of this section, the governor shall appoint the remaining nine (9) voting members to the council. Appointments to the council shall include, to the extent practicable, at least one (1) resident of each county served by an airport with commercial air service and shall include:

(ii) Two (2) ~~business~~ members ~~of the economically needed diversity options for Wyoming (ENDOW) executive council or other~~ who are business representatives participating in ~~ENDOW executive council~~ economic development or diversification initiatives;

Section 4. W.S. 9-12-1201 through 9-12-1203 as 37-5-701 through 37-5-703 are amended and renumbered to read:

ARTICLE 7

WYOMING ENERGY PERFORMANCE PROGRAM

~~9-12-1201~~ 37-5-701. Definitions.

(a) As used in this article:

(i) "Agency" means a branch, agency, department, board, instrumentality or institution of the state of Wyoming, a county, a municipal corporation, a school district, a community college district, the University of Wyoming, the cooperative tribal governing body, the Eastern Shoshone Tribe, the Northern Arapaho Tribe, a joint powers board formed pursuant to this act or a special district specifically involved in providing facilities or functions enumerated in W.S. 16-1-104(c);

(ii) "Energy conservation measure" means an energy study, audit, improvement or equipment that is designed to provide energy, water and operational cost savings at least equivalent to the amount expended by a facility owner for such energy study, audit, improvement or equipment over a period of not more than twenty (20) years after the date such improvement or equipment is installed or becomes operational;

(iii) "Energy performance contract" means the contract that allows a facility owner to accomplish energy or water efficiency projects without upfront capital costs or capital appropriations. An energy performance contract shall not be considered to be a contract for public improvement pursuant to W.S. 15-1-113;

(iv) "Energy services company" means the contractor not organized under the auspices of a utility regulated by the public service commission with demonstrated technical, operational, financial and managerial capabilities to design and implement energy conservation measures and the ability to secure necessary financial measures to ensure related guarantees for operational cost savings and who is responsible for the audit, design, implementation, measurement, verification and guarantee of savings for individual projects;

(v) "Facility owner" means an agency or group of agencies, a public hospital or other public entity responsible for an individual facility or group of facilities;

(vi) "Investment grade energy audit" means the detailed engineering investigation and report of a facility's current energy and water consuming equipment inventory, condition, operation, maintenance and performance, energy baseline, potential energy and water efficiency upgrades, life cycle costs and risks for future performance that provides the justification for the energy performance contract project;

(vii) "Wyoming energy conservation improvement program" means the ~~Wyoming business council~~ state energy office program within the Wyoming energy authority designed to enable and support development and implementation of energy performance contract projects;

(viii) "Authority" means the Wyoming energy authority created by W.S. 37-5-502.

~~9-12-1202~~ 37-5-702. Energy performance contracting.

The ~~council~~ Wyoming energy authority shall establish a Wyoming energy conservation improvement program ~~which~~ that

provides support development and implementation of energy performance contract projects to facility owners voluntarily participating in the program. In order to participate in the program, facility owners and energy services companies shall be subject to the provisions of this article and rules adopted pursuant to this article.

~~9-12-1203~~ 37-5-703. Energy performance contracting.

(a) Upon receipt of a request from a facility owner, the Wyoming ~~business council~~ energy authority shall provide the facility owner with a list of energy service companies interested in providing services to the facility owner and qualified by the Wyoming ~~business council~~ energy authority to participate in the Wyoming energy conservation improvement program.

(b) The energy services company participating in the Wyoming energy conservation improvement program shall provide an investment grade audit showing the estimated energy and operational cost savings that would result from the proposed energy conservation measures. Before executing any contract or lease purchase agreement under

subsection (c) of this section, the energy services company shall provide the facility owner with plans for the proposed energy conservation measures prepared by an engineer licensed to practice in Wyoming.

(c) Notwithstanding W.S. 15-1-113 and subject to the provisions of subsection (e) of this section, a facility owner may enter into an installment payment contract or lease purchase agreement for an energy or water conservation measure which meets the criteria of this section. Any documents related to negotiations entered into pursuant to this section with individual energy services companies by an agency or facility owner shall be considered trade secrets pursuant to the provisions of the Wyoming Public Records Act, W.S. 16-4-201 through 16-4-205. After a contract has been executed by an agency, the contract and all proposals from energy service companies shall be open records available for public inspection in accordance with the Wyoming Public Records Act.

(d) Energy performance contracts entered into pursuant to the Wyoming energy conservation improvement program shall require the energy services company to

provide to the facility owner an annual reconciliation of the guaranteed energy savings. If the reconciliation reveals a shortfall in annual energy savings, the energy services company shall be liable for compensation to the facility owner for such shortfall under the provisions of the energy performance contract. If the reconciliation reveals an excess in annual energy savings, the excess savings shall be retained by the facility owner and shall not be used to cover potential energy savings shortages in subsequent contract years.

(e) An energy performance contract entered into pursuant to the Wyoming energy conservation improvement program may provide for financing, including tax exempt financing, by a third party. The contract for third party financing may be separate from the energy performance contract. A separate contract for third party financing shall include a provision that the third party financier shall not be granted rights or privileges that exceed the rights and privileges available to the energy services company.

(f) The Wyoming ~~business council~~ energy authority may provide support under the Wyoming energy conservation improvement program as requested by facility owners for purposes of this section. The ~~Wyoming business council state energy office~~ authority may fix, charge and collect reasonable fees for any administrative support and resources or other services provided by the ~~Wyoming business council~~ authority pursuant to this subsection.

(g) If the facility owner fails to appropriate or receive an appropriation of money for a periodic payment due for improvements made through an energy performance contract, any security interest in any property created pursuant to the energy performance contract, may be enforced by the holder of such a security interest against the property.

(h) The term of an energy performance contract shall not exceed twenty (20) years after the date on which the work required by the energy performance contract to implement all energy conservation measures is completed.

(j) The Wyoming ~~business council~~ energy authority shall submit to the joint minerals, business and economic development interim committee by October 1, an annual report on the energy performance contracting performed under the Wyoming energy conservation improvement program. The report shall include the number of applications submitted, the number of facility owners, the number of energy performance contracts, the results of the investment grade energy audits and the results of the energy performance contracts.

Section 5. W.S. 9-12-1001 and 9-12-1002 are renumbered as W.S. 9-30-101 and 9-30-102.

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(iv) and (vii) through (x), 9-12-304(a), (b)(i)(C) through (E) and (e) through (h), 9-12-308, 9-12-601(m), 9-12-801 through 9-12-804, 9-12-901 through 9-12-905, 9-12-1103(a)(iii), 9-12-1301 through 9-12-1312, 9-12-1401 through 9-12-1403, 9-12-1509(a) and (b) and 26-4-103(m) are repealed.

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STAFF COMMENT

Below is a brief summary of the statutes repealed in this bill draft.

- **W.S. 9-2-2610(a)(iv): Definition of "ENDOW council."**
- **W.S. 9-12-105(a)(ix): Requirement to adopt a state broadband enhancement plan.**
- **W.S. 9-12-105(d)(i)(E)(II): Reporting requirements for the Small Business Innovation (Federal Innovation) Program (moved to W.S. 9-12-105(d)(i)(E)(I)).**
- **W.S. 9-12-105(d)(ii)(A) and (B): Matching funds award amount for the Small Business Innovation (Federal Innovation) program (moved to W.S. 9-12-105(d)(ii)(intro)).**
- **W.S. 9-12-108(c): ENDOW proposal for diversification.**
- **W.S. 9-12-112(a)(vi): Reporting requirements for the Workforce Housing Infrastructure Program (repealed in this bill draft).**
- **W.S. 9-12-114: ENDOW/proposal for startup-Wyoming investments.**
- **W.S. 9-12-201 and 9-12-202: The Science, Technology, and Energy Financial Aid Program.**
- **W.S. 9-12-301(a)(ii), (iv) and (vii) through (x), 9-12-304(a), (b)(i)(C) through (E) and (e) through (h): The following loan options within the Partnership Challenge Loan Program:**

- **Challenge loans to community development organizations and state development organizations.**
- **Wyoming Main Street Loan Participation Program.**
- **Natural Gas Fueling Infrastructure Loan Program.**
- **Guarantee Loan Participation (previously frozen in 2022).**
- **Loan Guarantee (previously frozen in 2022).**

- **W.S. 9-12-308: Large Project Loan Program.**
- **W.S. 9-12-601(m): Funding limits for planning grants and loans under the Business Ready Community Program.**
- **W.S. 9-12-801 through 9-12-804: Wyoming Community Facilities Program.**
- **W.S. 9-12-901 through 9-12-905: Wyoming Workforce Housing Infrastructure Program.**
- **W.S. 9-12-1103(a)(iii): Mainstreet Program/Reporting Requirement (moved to W.S. 9-12-1104(d)).**
- **W.S. 9-12-1301 through 9-12-1312 and 26-4-103(m): Wyoming Small Business Investment Credit Program.**
- **W.S. 9-12-1401 through 9-12-1403: Economically Needed Diversity Options for Wyoming (ENDOW).**
- **W.S. 9-12-1509(a) and (b): Broadband Advisory Council.**

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(END)