



WYOMING LEGISLATIVE SERVICE OFFICE

Memorandum

DATE May 1, 2021

TO Joint Minerals, Business and Economic Development Interim Committee

FROM Brian Fuller, Staff Attorney

SUBJECT Topic Summary: Wyoming Business Council

This summary provides an overview of the Wyoming Business Council, its applicable statutory and constitutional provisions, and the programs that it oversees.¹ The summary also includes information concerning 2021 legislation that impacts the Business Council.

Approved Interim Topic

Priority No. 1: Wyoming Business Council

The Committee will comprehensively review the Wyoming Business Council and its purposes, programs, functions, and operations. The Committee may develop and consider legislation to streamline, bolster, and improve the Council's programs and functions.

¹ A Joint Subcommittee on Economic Development was established by Management Council in 2014 and was continued in 2015 for purposes of reviewing the Wyoming Business Council and its programs. See 2015 Wyo. Session Laws, Ch. 142, § 342. The Subcommittee, comprised of members of this Committee and the Joint Appropriations Committee, reviewed the Business Council, focusing on its funding mechanisms and the expanded use of Amendment IV funds. The Subcommittee's legislative recommendations concerned the Small Business Innovation Research matching funds and a revision of the large-project loan program.

Wyoming Business Council--Overview

In 1998, the Legislature enacted the Wyoming Economic Development Act.² Within this act was the establishment of the Wyoming Business Council. The Business Council "is a body corporate operating as a state instrumentality operated solely for the public benefit."³ A board of directors governs the Business Council; the board currently has 15 voting members (directors), with the governor appointing and the Senate confirming the directors.⁴ The governor is a nonvoting member of the board and serves as a co-chairman.⁵ Directors serve three-year terms and cannot serve more than two terms consecutively.⁶ At least 12 of the appointed directors must be Wyoming residents.⁷ The board must retain a chief executive officer, who serves at the board's pleasure.⁸

The Business Council is authorized to form committees and advisory councils and appoint non-board members to those committees and councils.⁹ Statutory provisions regarding compensation and salaries, certain budgeting provisions, and the Wyoming Administrative Procedure Act do not apply to the Business Council.¹⁰ But the Council is subject to the Wyoming Public Records Act and the Public Meetings Act.¹¹ The Council must also submit an annual report, which must include the status of the implementation of a required comprehensive economic development strategy, recommended legislative and executive actions related to the implementation of that strategy, a summary of certain

² 1998 Wyo. Session Laws, Ch. 6, § 2. There were a number of predecessor boards, divisions, and committees that were transferred to the newly created Wyoming Business Council: the Economic Development and Stabilization Board; the Science, Technology, and Energy Authority; the Wyoming Travel Commission; the Investment Fund Committee; the Small Business Development Center Advisory Board; the Mid-American Manufacturing Technology Center's Industrial Advisory Board and Partner Steering Committee; the Department of Agriculture's Promotion and Marketing Division; the Department of Commerce's Division of Economic and Community Development; and the Department of Commerce's Division of Tourism and State Marketing. Id. § 1. The Office of Tourism handles tourism matters today.

³ W.S. 9-12-103(a).

⁴ Id. Beginning on March 1, 2022, the Business Council's board will have only 13 voting members. 2021 Wyo. Session Laws, Ch. 68, § 1.

⁵ W.S. 9-12-103(a).

⁶ Id.

⁷ Id.

⁸ Id.

⁹ W.S. 9-12-103(f).

¹⁰ W.S. 9-12-103(g).

¹¹ W.S. 9-12-103(h).

loans issued and investments made, and the progress of the research marketing center.¹² The Council is also required to submit its annual budget just as state agencies do.¹³

Statute grants the Business Council several general powers and duties, including:

- Rulemaking authority to implement the Council's programs and functions (rules must be submitted to Management Council as with other agency rules);¹⁴
- Authority to make and execute contracts;¹⁵
- Acquiring, owning, leasing, transferring, and selling real, personal, and intellectual property;¹⁶
- Providing advisory, consultative, or educational services and technical assistance;¹⁷
- Mortgage or pledge any or all of its revenue, income, or interest in or asset arising out of a venture agreement;¹⁸
- Secure consulting services for professional, financial, and technical assistance and advice (including for studies likely to lead to business development);¹⁹
- "Make investments in projects that have potential to stimulate economic development in the state;"²⁰
- Give advice and assistance and provide services to state agencies, local and regional economic development entities, private firms, and other persons providing services or facilities for economic development in Wyoming;²¹
- "Do all acts and things necessary or convenient to carry out the powers granted to it by this act or any other act[.]"²²

Statute also states that the Business Council's duty is "to encourage, stimulate and support the development and expansion" of the state's economy. Among other things, the Council is charged with the following:

¹² W.S. 9-12-112(a).

¹³ W.S. 9-12-112(b).

¹⁴ W.S. 9-12-104(a)(iv).

¹⁵ W.S. 9-12-104(a)(iii).

¹⁶ W.S. 9-12-104(a)(v) and (vi).

¹⁷ W.S. 9-12-104(a)(viii).

¹⁸ W.S. 9-12-104(a)(ix).

¹⁹ W.S. 9-12-104(a)(xii).

²⁰ W.S. 9-12-104(a)(xvii).

²¹ W.S. 9-12-104(a)(xviii).

²² W.S. 9-12-104(a)(xix).

- Prepare and carry out effective economic development and diversification marketing and promotional programs;
- Make available to prospective businesses basic business information;
- Formulate, promulgate, and advance programs in Wyoming for encouraging the location of new businesses in Wyoming and retain and grow existing businesses;
- Encourage and solicit private-sector involvement, support, and funding for economic development in Wyoming;
- Encourage the coordination of the economic development and diversification efforts of public agencies and communities;
- Establish necessary offices in and out of the state necessary to expanding and developing industries and trade;
- Encourage the export of Wyoming products and services to national and international markets;
- Advise the University of Wyoming and community colleges "in designating technical training and other educational programs in Wyoming's community colleges and the University of Wyoming beneficial to economic development and diversification activities" in Wyoming;
- Adopt a statewide broadband enhancement plan.²³

The Business Council is also required to develop a comprehensive economic development strategy for Wyoming in the first year of each new gubernatorial administration, including conducting any necessary studies and research for developing that strategy.²⁴ The Council may establish a Wyoming Market Research Center for conducting market research for small businesses and potential entrepreneurs.²⁵ The Council is required to compile information and coordinate on assisting prospective businesses in obtaining all necessary permits and licenses.²⁶ Further, the Council must "encourage and promote the development of agriculture" in Wyoming, including developing strategies for beef-processing plants and promoting and marketing Wyoming grown agricultural products.²⁷

²³ W.S. 9-12-105(a).

²⁴ W.S. 9-12-106(a).

²⁵ W.S. 9-12-106(b).

²⁶ W.S. 9-12-108.

²⁷ W.S. 9-12-109(a) and (b).

Constitutional Provisions

Before discussing the various programs that the Business Council implements and oversees, it may be helpful to briefly describe the constitutional provisions that may apply to the operation of these programs.

First, the Wyoming Constitution prohibits any appropriation "made for charitable, industrial, educational or benevolent purposes to any person, corporation or community not under the absolute control of the state, nor to any denominational or sectarian institution or association."²⁸

Second, the Constitution places limitations on state debt: the state cannot create any indebtedness exceeding one percent on the assessed value of the state's taxable property,²⁹ and the state cannot create debt in excess of taxes for the current year without approval through a vote of the people.³⁰

Third, the state is limited from loaning its credit or making donations in Article 16, Section 6, which reads:

Article 16, Section 6. Loan of credit; donations prohibited; works of internal improvement.

(a) Neither the state nor any county, city, township, town, school district, or any other political subdivision, shall:

(i) 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[.]³¹

A constitutional amendment adopted by the people in 1986 provides an exception to these provisions and created an Economic Development Loan Fund. The program for this fund is commonly referred to as "Amendment IV," a reference to its designation on the ballot. Article 16, Section 12 provides the parameters for this program and is copied below in full:

Article 16, Section 12. Economic development loan fund.

²⁸ Wyo. Const. art. 3, § 36.

²⁹ Wyo. Const. art. 16, § 1.

³⁰ Wyo. Const. art. 16, § 2. This limitation on debt creation does not apply when the debt is created "to suppress insurrection or to provide for the public defense." Id.

³¹ Wyo. Const. art. 16, § 6 (emphasis added).

(a) Notwithstanding Article 3, Section 36 and Article 16, Sections 1, 2 and 6 of this Constitution, the legislature, by a two-thirds (2/3) vote of all the members of each of the two (2) houses voting separately, may appropriate monies in an amount not exceeding one percent (1%) times the assessed value of the taxable property in the state as shown by the last preceding general assessment for taxation, to provide a revolving investment fund to be used to promote and aid the economic development of the state.

(b) The investment fund created by this section shall be used to provide fully-funded loan guarantees or loans to proposed or existing enterprises which will employ people within the state, provide services within the state, use resources within the state or otherwise add economic value to goods, services or resources within the state.

(c) Monies within the revolving investment fund shall be loaned or used to guarantee loans under such terms and conditions as the legislature may by law direct.

(d) The cumulative total of monies appropriated to provide a revolving investment fund shall never exceed one percent (1%) on the assessed value of the taxable property in the state as shown by the last preceding general assessment for taxation.

(e) Notwithstanding the limitation of subsection (d) of this section, earnings on the revolving investment fund shall be added to the revolving investment fund and shall be invested as provided in this section.

There are several principles that follow from this section:

- Any appropriation to this economic-development investment fund requires a 2/3 vote of each house of the Legislature.
- No appropriation to the fund can exceed 1% of the assessed value of the state's taxable property.
- The investment fund "shall be used to provide fully-funded loan guarantees or loans" for economic-development purposes.
- The cumulative total appropriations for the fund "shall never exceed" 1% of the assessed value of taxable property.
- Earnings on the fund must be deposited in the fund.

Finally, although not expressly enshrined in the Constitution, the Wyoming Supreme Court has long held that any appropriation must be for a public purpose.³²

Wyoming Business Council Programs

Below is a brief description of each program of the Wyoming Business Council that is enshrined in statute.

Economic Development Services Programs

The Legislature recently established two programs as part of the creation of the Economically Needed Diversity Options for Wyoming (ENDOW) program. First, the "startup:Wyoming" program was created to foster connectivity between entrepreneurs, investors, and mentors and providing entrepreneurs with advanced resources to help their business succeed.³³ As part of this program, the Business Council can develop incubators and business accelerators to foster entrepreneurialism.³⁴ Second, the "kickstart:Wyoming" program provides funding to early stage ventures of Wyoming-based entrepreneurs.³⁵ Funding under this program can range from \$5,000 to \$50,000 and is subject to several conditions, including funding proposals for entities who are committed to "maintaining a meaningful nexus" to Wyoming and who propose a service or product that has a probability of providing an economic return to the state.³⁶

Statute also requires the Business Council to administer a Small Business Innovation Research Matching Program that provides a match for federal funds approved for Wyoming-based companies.³⁷ Entities headquartered and organized in Wyoming seeking to commercialize a product or service may be eligible for the matching state funds, and repayment is required if the entity commercializes a service or product or if the entity

³² See State v. Carter, 215 P. 477, 479 (Wyo. 1923) (stating that "it is elementary that the legislature cannot levy a tax or make an appropriation except only for public purposes, and this is true whether the constitution so expressly provides or not."). The Attorney General has issued several opinions concerning various economic-development projects of the Wyoming Business Council and their conformity to constitutional requirements. Those opinions are on file in the Legislative Service Office for review.

³³ W.S. 9-12-105(b).

³⁴ W.S. 9-12-105(b)(iii).

³⁵ W.S. 9-12-105(c).

³⁶ W.S. 9-12-105(c)(i) and (ii).

³⁷ W.S. 9-12-105(d).

fails to maintain a significant nexus with Wyoming within 3 years of commercialization.³⁸

Science, Technology, and Energy Financial Aid

Upon creation of the Business Council, the Council assumed the duties of the earlier Science, Energy and Technology Authority—chiefly, providing financial support for science, technology, and energy projects that would provide initial capitalization needs of a Wyoming-based enterprise's project that has a reasonable chance of success and requires the Council's participation because funding is unavailable in the traditional capital markets or is offered at terms that would substantially hinder the enterprise's success.³⁹ Any agreement for this financial assistance between an enterprise and the Council must provide for a return to the Council that is commensurate with the level of risk and the amount of financial assistance provided.⁴⁰

Partnership Challenge Loan Program

The Partnership Challenge Loan Program is a loan program to provide loans to community development organizations and state development organizations to provide financing for new, existing, or expanding businesses or other economic or community development purposes.⁴¹ Except as noted further below, loans issued under this program have the following conditions and stipulations:

- The Business Council must prepare forms and an application that is subject to the Council's rules.⁴²
- Any state or community development organization can apply for a loan, and the Council must review and either approve or disapprove of all completed

³⁸ W.S. 9-12-105(d)(i) and (iii)–(iv).

³⁹ W.S. 9-12-202(a) and (c).

⁴⁰ W.S. 9-12-202(e).

⁴¹ W.S. 9-12-301; 9-12-302(a). Community development organizations are groups of private citizens organized as a business entity for the purpose of providing financing for new, existing, or expanding businesses and other economic or community development purposes through its community or county. W.S. 9-12-301(a)(ii). State development organizations are corporations organized under the Wyoming Industrial Corporation Act to provide financing for new, existing, or expanding businesses and to fulfill other economic or community development purposes throughout the state. W.S. 9-12-301(a)(iv).

⁴² W.S. 9-12-302(a).

applications. The Council must consider whether approving the application "would cause unfair competition with any existing business in the area."⁴³

- The Council must establish all fees and interest rates to be charged for each loan, but the interest rate must be at least three percent. Fees are deposited into a separate account and are continuously appropriated for administering this program and its loans.⁴⁴
- The Council must establish loan amortization schedules, terms, and conditions for each loan approved.⁴⁵
- Loans can only be made to community and state development organizations so long as:
 - The organization provides matching funds in at least the amount of the loan to a program of investment in its area of local economic development;
 - The organization will consolidate the loan it receives and its required contribution and make loans to Wyoming businesses and investments in support of Wyoming businesses;
 - If a community development organization, that organization has received an endorsement by resolution of the legislative body of the municipality or county. If a state organization, that organization has received an endorsement by a Council resolution;
 - Any agreement includes the Council's reserving the right to terminate the agreement to ensure that funds loaned are invested in a reasonable period of time.⁴⁶

Partnership loans are limited for community development organizations to not more than \$500,000; for state development organizations, loans are limited to \$3,500,000.⁴⁷ Loans can only be made if there are sufficient funds in the economic development enterprise account to fully fund it and all other outstanding commitments.⁴⁸ State-provided funds must be adequately collateralized, with the Council charged with determining the adequacy of the collateral.⁴⁹

⁴³ W.S. 9-12-303.

⁴⁴ W.S. 9-12-302(b).

⁴⁵ W.S. 9-12-303.

⁴⁶ W.S. 9-12-304(a).

⁴⁷ W.S. 9-12-304(b)(i).

⁴⁸ W.S. 9-12-304(b)(ii).

⁴⁹ W.S. 9-12-304(b)(iii).

The Partnership Challenge Loan Program provides other forms of loans as well, including loans for businesses.⁵⁰ First, economic-disaster loans are available. Statute defines an economic disaster as an event that:

- "Has an economic impact with total lost revenues to impacted businesses in a twelve (12) calendar month period of at least four million dollars (\$4,000,000.00)"; or
- Has "an economic impact with total lost revenues to impacted businesses in four (4) or less counties in a twelve (12) calendar month period of at least one million dollars (\$1,000,000.00)."⁵¹

The Business Council can use good-faith estimates of lost revenues to businesses in determining whether an event qualifies as an economic disaster, but it can only use actual losses incurred—not future losses—to determine whether the monetary threshold for an economic disaster is met.⁵²

Any business (or group of businesses) can apply to the Business Council for an economic-disaster declaration.⁵³ Once a declaration is issued, then the business (or businesses) within the economic-disaster area "that has lost revenue as a result of the economic disaster" can seek and receive a loan up to \$500,000 that can be used to spread that loss over a longer period of time to maintain operations.⁵⁴

Second, bridge financing is available under the Partnership Challenge Loan Program. But under statute, these loans are for the Business Council to partner with a commercial lender for the completion of a specific, defined project.⁵⁵ These bridge-financing loans also require a business to contribute up to 15% of the total project cost.⁵⁶

Third, any business can apply for a guarantee loan participation, which is a provision of Council financing where the Council participates with a lender that has secured a federal

⁵⁰ A business is defined as "any proposed or existing enterprise which employs people within the state, provides services within the state, uses resources within the state or otherwise adds economic value to goods, services or resources within the state, and includes farm and ranch operations." W.S. 9-12-301(a)(i).

⁵¹ W.S. 9-12-301(a)(v).

⁵² Id.

⁵³ W.S. 9-12-304(c).

⁵⁴ Id.

⁵⁵ W.S. 9-12-301(a)(vi).

⁵⁶ Id.

guaranteed loan to guarantee repayment of a loan made to a business.⁵⁷ The Council's participation is limited to the lesser of 50% of the loan or \$2,000,000.⁵⁸

Fourth, any business can apply for a loan guarantee where the Council guarantees a portion of a bank loan made to a business.⁵⁹ The Council must structure any guarantee so that, if there is a default, the Council's liability is limited to the lesser of \$100,000 per loan guaranteed or 80% of any net loan loss by the bank.⁶⁰

Fifth, any business can apply for a Wyoming Main Street Loan Participation, where the Council participates with a lender that has made a loan to a business for building improvements to maintain the structure's historical character.⁶¹ The Council can participate up to the lesser of 50% of the loan or \$2,000,000.⁶²

Finally, any business can apply for a Natural Gas Fueling Infrastructure Loan, which is a loan for the costs of the engineering, design, real property, equipment, and labor necessary to install a functioning natural gas filling station for motor vehicles running on natural gas.⁶³ These loans can be for up to the lesser of 75% of the total project cost of \$1,000,000.⁶⁴ No more than \$5,000,000 in these loans can be issued.⁶⁵ Interest and principal payments are deferred for the first two years.⁶⁶ The Council has to consider whether the proposed infrastructure is located in an area that has existing infrastructure, and whether there are a significant number of government or private fleet vehicles in the area of the proposed infrastructure that could be converted to natural gas.⁶⁷

Large Project Loan Program

The Business Council also oversees the large project loan program. In 2014, the Legislature created the large project account within the revolving investment fund (that was created under Article 16, Section 12) to provide loans and loan guarantees.⁶⁸ In the

⁵⁷ W.S. 9-12-304(e); 9-12-301(a)(vii).

⁵⁸ W.S. 9-12-301(a)(vii).

⁵⁹ W.S. 9-12-301(a)(viii); 9-12-304(f).

⁶⁰ W.S. 9-12-304(f).

⁶¹ W.S. 9-12-304(g); 9-12-301(a)(ix).

⁶² W.S. 9-12-301(a)(ix).

⁶³ W.S. 9-12-304(h); 9-12-301(a)(x).

⁶⁴ W.S. 9-12-304(b)(i).

⁶⁵ W.S. 9-12-304(h).

⁶⁶ Id.

⁶⁷ Id.

⁶⁸ 2014 Wyo. Session Laws Ch. 46, § 2.

2020 Budget Session, the Legislature codified that account, which is to be used exclusively for promoting and aiding economic development in Wyoming through loans and loan guarantees to proposed or existing businesses.⁶⁹

Businesses and enterprises seeking loans through this program apply through the Business Council, which reviews the proposed project and makes recommendations to a Loan Review Committee consisting of the governor, the treasurer, and a board member of the Business Council.⁷⁰ That committee makes its recommendations for consideration by the State Loan and Investment Board, which makes the final funding decision. Loans can only be issued if it is for a project that is anticipated to have an economic impact and public benefit greater than regularly funded projects and that provides certain public benefits (including job creation and tax-revenue increases).⁷¹ The Business Council can set the interest rate for these loans, which require at least a 25% match from non-state sources.

Wyoming Council for Women's Issues

Within the Business Council is the Wyoming Council for Women's Issues, which focuses on employment practices, educational opportunities, home and community, and legal rights and responsibilities.⁷² This council has 14 members who are appointed by the governor and who serve six-year terms.⁷³

Community Infrastructure Program (Business Ready Community Program)

The Business Council also has established (per statute) and administers the Wyoming Business Ready Community Program.⁷⁴ Through this program, cities, towns, and counties can apply for a grant or loan for economic or educational development, planning or infrastructure projects, rights of way, sewer and water projects, roads, and facilities, among others.⁷⁵ Grants must be matching grants, and loans under the program "shall be made at no or low interest rates."⁷⁶

⁶⁹ W.S. 9-12-308(b), as created by 2020 Wyo. Session Laws Ch. 109, § 1.

⁷⁰ W.S. 9-12-308(c) and (d), as created by 2020 Wyo. Session Laws Ch. 109, § 1.

⁷¹ W.S. 9-12-308(f), as created by 2020 Wyo. Session Laws Ch. 109, § 1.

⁷² W.S. 9-12-501.

⁷³ W.S. 9-12-502.

⁷⁴ W.S. 9-12-601.

⁷⁵ W.S. 9-12-601(b).

⁷⁶ W.S. 9-12-601(c).

The Council can determine by rule the maximum annual amount for grants or loans for one project (currently \$25,000 to \$3,000,000, depending on the type of project).⁷⁷ Planning grants and loans can also be issued but cannot exceed 2% of the total amount appropriated to the program, are limited to \$100,000 per project, and requires a 25% match from funding other than a community-development block grant.⁷⁸ The Council can also make grants for improving the development of businesses that will provide data generation and IT storage capabilities, encouraging and providing for the expansion of existing businesses providing IT storage enterprises, and providing a reduction of the costs for electrical power for those businesses.⁷⁹

In the 2020 Budget Bill, \$21,300,000 in general funds and \$8,000,000 from the local government capital-construction account were appropriated for the Investment Ready Communities program.⁸⁰ In the 2021 Supplemental Budget Bill, the Legislature approved reductions to the Investment Ready Communities program budget, based on the governor's recommendations.⁸¹ Based on these actions, \$17,571,543 of the general funds appropriated to the program remain, less any expenditures on the program during the biennium.⁸² It appears that these funds are primarily used for "business-committed" projects—those that assist businesses to start-up, expand, or retain jobs in Wyoming, and for community-development projects.⁸³

Wyoming Community Facilities Program

The Business Council also administers a program for assisting communities with preserving former school and government facilities that have existing or future community uses.⁸⁴ Any city, town, county, or other local governmental entity with a demonstrated need for a community facility can apply for a grant or loan.⁸⁵ The Council can recommend grants or loans to the State Loan and Investment Board for projects that

⁷⁷ W.S. 9-12-601(d).

⁷⁸ W.S. 9-12-601(m).

⁷⁹ W.S. 9-12-601(j).

⁸⁰ See 2020 Wyo. Session Laws, Ch. 80, § 2, § 085.

⁸¹ See 2021 Wyo. Session Laws, Ch. 69, § 2, § 085.

⁸² Id.

⁸³ See Business Ready Communities Program Overview, available at <https://www.wyomingbusiness.org/Uploads/DocumentLibrary/BRC%20-%20Rules,%20Apps,%20Forms/2019%20BRC%20Program%20Overview.pdf> (last visited April 26, 2021).

⁸⁴ W.S. 9-12-801(a)–(b).

⁸⁵ W.S. 9-12-801(c).

provide space for community gatherings and recreational facilities.⁸⁶ The Board must give final approval before any loan or grant is issued.⁸⁷

In order to qualify for a grant or loan, a city or county must commit to adequately maintain the project facility, demonstrate that the facility isn't otherwise provided in the community and that it won't compete with existing businesses or organizations, and show that all project costs will be funded at the time of receiving a grant or loan.⁸⁸ Grants under this program are matching grants.⁸⁹

Community Workforce Housing Program

Statute also provides for a Community Workforce Housing Infrastructure Program for local governments to apply for zero-percent or low-interest loans for workforce housing infrastructure projects (publicly owned infrastructure for a workforce-housing subdivision or development) and community land trust projects (land held in trust as a public investment for the community's long-term benefit).⁹⁰ Statute sets for limits for the types of projects and community land trusts for which loans can be issued.⁹¹ Funds for this program are in a separate program account that can be used only upon legislative appropriation for agreements and loans that are authorized in statute.⁹²

Wyoming Tourism Board

The Wyoming Tourism Board is the leading proponent of Wyoming's tourism and hospitality industry.⁹³ Statute provides that this board is responsible for implementing the tourism program and functions assigned to the Business Council, including expending all funds appropriated for the tourism program.⁹⁴ The board is charged with implementing programs to promote Wyoming tourism, assemble and distribute tourism information, and encourage cooperation between public and private agencies for highlighting

⁸⁶ W.S. 9-12-801(d).

⁸⁷ W.S. 9-12-801(f).

⁸⁸ W.S. 9-12-802(a).

⁸⁹ W.S. 9-12-803(a).

⁹⁰ W.S. 9-12-902(a).

⁹¹ W.S. 9-12-903 and 9-12-904.

⁹² W.S. 9-12-905(a).

⁹³ W.S. 9-12-1001(a).

⁹⁴ W.S. 9-12-1002(a).

Wyoming's recreational resources.⁹⁵ The board has rulemaking authority to implement these directives.⁹⁶

Main Street Program

Statute requires the Business Council to establish and administer a Wyoming Main Street Program to coordinate state and local participation in programs that the National Main Street Center offers to help municipalities in planning, managing, and implementing programs to revitalize business areas.⁹⁷ In implementing this program, the Business Council enter into contracts, employ any necessary staff (subject to legislative authorization), and develop a plan describing the program's objectives.⁹⁸

A Main Street Advisory Board exists to assist the Council in developing a plan to operate the program and annually evaluate the program. The Council is charged with determining the number of municipalities to participate in the program, making selections based on private and public sector interest in revitalizing a business area, the potential for private-sector investment, and local organization and financial commitment for employing a manager and paying for a design consultant.⁹⁹

Wyoming Energy Performance Program

Statute requires the Business Council to establish a Wyoming Energy Conservation Improvement Program to support the development and implementation of energy performance contract projects for participating facility owners.¹⁰⁰ A participating owner must seek an investment-grade audit that shows the estimated energy and operational cost savings that would result from any proposed energy conservation measures.¹⁰¹ After that audit, the facility owner can enter into a lease or installment contract for an energy or water conservation measure; any contract can be for up to 20 years after the work is completed.¹⁰² A required part of any lease or contract is that the energy services company that is contracted to implement the energy-saving measures must provide an annual reconciliation of the guaranteed energy savings.¹⁰³ If there is a shortfall in savings, the

⁹⁵ W.S. 9-12-1002(a).

⁹⁶ W.S. 9-12-1002(c).

⁹⁷ W.S. 9-12-1104(a).

⁹⁸ W.S. 9-12-1104(b).

⁹⁹ W.S. 9-12-1105(a).

¹⁰⁰ W.S. 9-12-1202.

¹⁰¹ W.S. 9-12-1203(b).

¹⁰² W.S. 9-12-1203(c), (h).

¹⁰³ W.S. 9-12-1203(d).

energy services company is liable and must compensate the facility owner for the shortfall. If there is an excess in savings, the facility owner retains those savings, which cannot be used to cover a future shortfall.¹⁰⁴

Wyoming Small Business Investment Credit

The Small Business Investment Credit Program is an alternative capital funding option for Wyoming businesses that the Business Council helps oversee. Private investment companies can seek certification from the Business Council as a Wyoming small business investment company; in order to achieve that certification, the investment company must meet certain requirements related to equity capitalization and sufficient management experience in venture capital.¹⁰⁵ Then, qualified businesses in Wyoming can seek capital investment from the small business investment company.¹⁰⁶ Businesses are qualified businesses if they are independently owned and operated, have 250 employees or less, are headquartered in Wyoming (or have principal operations here), has no financial relationship with a small business investment company, and are not predominantly engaged in certain industries.¹⁰⁷ The qualified business must agree to remain in Wyoming after the investment.¹⁰⁸

After a small business investment company provides capital funding, the investors that invest the designated capital in the small business investment company is eligible for a credit against any state premium tax liability for up to 100% of the investment in the company.¹⁰⁹ The aggregate amount of investment tax credits under the program cannot exceed \$30,000,000.¹¹⁰

Broadband Enhancement Program

The Business Council is also required to operate the Broadband Development Program, which was created to provide funding to promote the expansion of access to broadband internet service in unserved areas of Wyoming.¹¹¹ Certain business entities and governmental entities are eligible to seek funding to support the acquisition, deployment, and installation of infrastructure for broadband service that provides at least download

¹⁰⁴ Id.

¹⁰⁵ W.S. 9-12-1303(b).

¹⁰⁶ W.S. 9-12-1307.

¹⁰⁷ W.S. 9-12-1302(a)(vi).

¹⁰⁸ Id.

¹⁰⁹ W.S. 9-12-1305(a).

¹¹⁰ W.S. 9-12-1306(a).

¹¹¹ W.S. 9-12-1501(a).

speeds of 25 megabits per second and upload speeds of 3 megabits per second in residential areas (for business corridors, download speeds must be 900 megabits per second and upload speeds must be 35 megabits per second).¹¹² No single project can exceed \$5,000,000 in funding.¹¹³

The Legislature amended the parameters of this program during the 2021 General Session to, among other things: (1) revise broadband speed requirements for projects to meet; (2) authorize the use of program funding for middle-mile projects (those that connect last-mile broadband infrastructure to network service providers); (3) revise the application process to remove requirements for contacting other broadband providers before applying; (4) authorize state agencies to partner with private entities for projects; and (5) amend the challenge process to prohibit challengers that fail to complete projects from seeking funding and from challenging for an extended period of time.¹¹⁴

The Business Council is also required to establish a Broadband Advisory Council to provide advice and make recommendations regarding broadband availability and needs and to prepare a broadband enhancement plan for the state.¹¹⁵

When the Broadband Enhancement Program was established, \$10,000,000 was appropriated from the Legislative Stabilization Reserve Account to a subaccount created for the broadband-development program.¹¹⁶ Currently, there are approximately \$10,660,000 in funds available for broadband funding.

2021 Legislation

Several acts enacted during the 2021 General Session impacts the Business Council or amends its duties, including the following:

- The Board of the Business Council will be reduced from 15 to 13 voting members, beginning on March 1, 2022.¹¹⁷
- The Business Council is required to administer the COVID-19 large business relief program, which was created to provide stipends to certain large businesses impacted by the COVID-19 pandemic or by required closures during the

¹¹² W.S. 9-12-1501(b).

¹¹³ W.S. 9-12-1506(b).

¹¹⁴ 2021 Wyo. Session Laws, Ch. 139.

¹¹⁵ W.S. 9-12-1509(a) and (b).

¹¹⁶ 2018 Wyo. Session Laws, Ch. 126, § 3.

¹¹⁷ 2021 Wyo. Session Laws, Ch. 68, § 1.

pandemic. The Council must promulgate rules to operate the program and ensure that businesses meet eligibility requirements before disbursing funds.¹¹⁸

- The Business Council is required to disburse grants using CARES Act funds for agricultural businesses based on losses that a producer incurred due to COVID-19.¹¹⁹
- The Business Council is tasked with disbursing appropriated CARES Act funds for the Connect Wyoming broadband development program that the Business Council established last year to address broadband issues and projects during the COVID-19 pandemic.¹²⁰

This summary is meant to provide a brief overview of the Wyoming Business Council and its programs. Please let me know if you have any questions or need further information.

¹¹⁸ 2021 Wyo. Session Laws, Ch. 86.

¹¹⁹ 2021 Wyo. Session Laws, Ch. 110.

¹²⁰ 2021 Wyo. Session Laws, Ch. 92.