

HOUSE BILL NO. HB0213

Wyoming Economic Resource Initiative Act.

Sponsored by: Representative(s) Law and Illoway

A BILL

for

1 AN ACT relating to economic development; creating the
 2 Wyoming economic resource initiative program; establishing
 3 a board; authorizing investment pools; authorizing credits
 4 against insurance premium taxes for investments as
 5 specified; providing criteria; authorizing a single
 6 economic resource initiative provider; requiring investment
 7 of pool offset amounts as specified; authorizing fees;
 8 requiring reports; providing definitions; and providing for
 9 an effective date.

10

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

12

13 **Section 1.** W.S. 9-12-801 through 9-12-808 are
 14 created to read:

15

16

ARTICLE 8

17

WYOMING ECONOMIC RESOURCE INITIATIVE

1

2 **9-12-801. Short title.**

3

4 This article shall be referred to as the "Wyoming economic
5 resource initiative program".

6

7 **9-12-802. Definitions.**

8

9 (a) As used in this article:

10

11 (i) "Board" means the Wyoming economic resource
12 initiative board of directors;

13

14 (ii) "Conversion cost" means all costs of
15 forming, syndicating and closing a pool, including without
16 limitation, the costs of defeasing and insuring the
17 obligations of the WERI provider to the investors incurred
18 in connection with that pool;

19

20 (iii) "WERI" means the Wyoming economic resource
21 initiative program;

22

23 (iv) "WERI costs" means:

24

1 (A) An annual management fee that is not to
2 exceed two and one-half percent (2 ½%) of the pool offset
3 amount; and

4

5 (B) Distributions to direct or indirect
6 parent entities of the WERI provider, if the WERI is taxed
7 as a partnership, equal to any projected increase in
8 federal or state income taxes of such entities, resulting
9 from the earnings of the WERI provider.

10

11 (v) "WERI provider" means the entity exclusively
12 designated by the council pursuant to this article:

13

14 (A) To receive investments from investors
15 for each of the pools; and

16

17 (B) To invest each pool in accordance with
18 the directives of the board and this article;

19

20 (vi) "Economic development project" means a
21 project or business that meets all of the following
22 criteria at the time of the investment:

23

1 (A) The project or business is
2 headquartered in Wyoming and its principal operations are
3 located in Wyoming or at least seventy-five percent (75%)
4 of the employees are employed in Wyoming or the project or
5 business has committed in writing to move to Wyoming as a
6 condition of the investment;

7

8 (B) The WERI provider's investment in the
9 project or business will foster economic development in the
10 state;

11

12 (C) The project or business has, or
13 forecasts that it shall have or procure sufficient
14 resources to meet any obligations due to the WERI provider
15 as a result of the investment;

16

17 (D) The project or business has been
18 approved by the board pursuant to this article; and

19

20 (E) The project or business has been
21 approved by the WERI provider.

22

23 (vii) "Investor" means an insurer with a tax
24 liability under W.S. 26-4-103;

1

2 (viii) "Investor offset allocation" means the
3 total amount of offsets that may be used to reduce an
4 investor's state liability that are allocated to that
5 investor by the council pursuant to this article;

6

7 (ix) "Pool allocation date" means the date on
8 which the WERI provider and its investors receive the
9 allocation of offsets with respect to a particular pool;

10

11 (x) "Pool amount" means, with respect to a
12 particular pool, the pool offset amount less conversion
13 costs, and shall include funds returned to the WERI
14 provider by or as a result of a prior investment in an
15 economic development project;

16

17 (xi) "Pool offset amount" means the aggregate of
18 all investor offset allocations for a particular pool;

19

20 (xii) "State liability" means a liability
21 incurred by an insurer under W.S. 26-4-103, or in the case
22 of a repeal or reduction by the state of the liability
23 imposed by W.S. 26-4-103, any other tax liability imposed
24 upon an investor by the state.

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9-12-803. Provider application and designation.

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(a) Not later than July 1, 2004, the council shall designate one WERI provider applicant to be the exclusive WERI provider for all purposes under this article in accordance with the laws of this state. The council may promulgate rules as necessary to effectuate the designation.

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(b) The WERI provider applicant shall demonstrate in its application that it meets all of the following criteria:

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21

(i) The WERI provider applicant, together with its affiliates, has raised at least fifty million dollars (\$50,000,000.00) in the aggregate for investment in state or federal economic development programs with an emphasis on small and emerging business investment within the past five (5) calendar years;

22

23

(ii) The WERI provider applicant or its affiliates has raised at least two hundred million dollars

1 (\$200,000,000.00) for investment purposes within the past
2 five (5) calendar years;

3

4 (iii) No director, officer or senior manager of
5 the WERI provider applicant shall be related to any member
6 of the council, any member of the legislature or any member
7 of the executive branch of the state;

8

9 (iv) The WERI provider applicant shall be a
10 bankruptcy-remote, special purpose entity that has no
11 purpose other than participation under this article and all
12 related activities;

13

14 (v) The debt obligations of the WERI provider
15 applicant shall be rated AAA by a nationally recognized
16 rating organization and the debt obligations shall be
17 supported by at least two (2) entities with a claims paying
18 or senior debt rating of AAA by a nationally recognized
19 rating organization.

20

21 **9-12-804. Board of directors.**

22

23 (a) All investments made by the WERI provider shall
24 be selected by or receive the prior approval of the board.

1

2 (b) The board shall consist of five (5) directors, as
3 follows:

4

5 (i) The board's chairman, to be appointed by the
6 governor;

7

8 (ii) The state treasurer or his designee;

9

10 (iii) The executive director of the council;

11

12 (iv) The state auditor or his designee;

13

14 (v) The WERI provider as selected by the
15 council.

16

17 **9-12-805. Allocation of offsets.**

18

19 (a) The council shall, within sixty (60) days
20 following the WERI provider designation, make an allocation
21 of offsets for the first pool.

22

23 (b) The pool offset amount to be allocated by the
24 council to the investors in the first pool shall be twenty-

1 five million dollars (\$25,000,000.00). The council shall
2 allocate to each investor in the applicable pool an
3 investor offset allocation equal to such investor's
4 allocation request, not to exceed twenty-five million
5 dollars (\$25,000,000.00) in the aggregate for that pool.
6 The WERI provider's investors may not request investor
7 offset allocations in excess of the pool offset amount.

8

9 (c) No allocation of offsets shall be made to an
10 investor unless, as a condition of the allocation to be
11 made to that investor, the WERI provider has agreed to
12 invest an amount equal to that allocation of offsets in
13 accordance with this article out of such pool.

14

15 (d) The council shall allocate the second and third
16 pools following the same procedures governing the
17 allocation of the first pool, provided:

18

19 (i) The council may allocate the second pool at
20 any time beginning ninety (90) days following the
21 allocation of the first pool. The second pool offset
22 amount shall be twenty-five million dollars
23 (\$25,000,000.00);

24

1 (ii) The council may allocate the third pool at
2 any time beginning ninety (90) days following the
3 allocation of the second pool. The third pool offset
4 amount shall be twenty-five million dollars
5 (\$25,000,000.00).

6
7 (e) In the event that the WERI provider fails to
8 receive commitments from investors to invest at least
9 eighty percent (80%) of the maximum pool offset amount for
10 a particular pool by the date on which the allocation for
11 such pool is scheduled, the council may at its option
12 either accept the investment amount to which the investors
13 have committed or delay the fund allocation date by an
14 additional sixty (60) days.

15

16 **9-12-806. Investments; vesting of offsets.**

17

18 (a) Each investor that receives an allocation of
19 offsets pursuant to this article and makes an investment in
20 the WERI provider shall earn vested offsets against state
21 liability as provided in this section, equal to that
22 investor's total investor offset allocation. The offsets
23 shall be earned and vested on the date of the investor's
24 investment in the WERI provider, but may only be used by

1 the investor in accordance with subsection (b) of this
2 section.

3

4 (b) Each investor that receives an allocation of
5 offsets for a pool and invests in the WERI provider may,
6 with respect to such pool:

7

8 (i) Take up to twenty percent (20%) of the
9 investor's offset allocation for such pool as a credit
10 against state liability each year for five (5) consecutive
11 years, beginning with the annual return filed for the
12 calendar year that includes the fourth anniversary of the
13 allocation date for such pool; and

14

15 (ii) Reduce its estimated payments of state
16 liability for each year for which offsets are available to
17 offset state liability by the same percentage as the
18 percentage payment due on each estimated payment date.

19

20 (c) No single investor, together with its affiliates,
21 shall invest or commit to invest more than twenty-five
22 percent (25%) of the maximum pool offset amount for each
23 pool.

24

1 (d) The offsets against state liability that are used
2 by an investor for any year shall not exceed the full state
3 liability of the investor for that year.

4
5 (e) Any offsets against state liability that an
6 investor is allowed under this section but is unable to use
7 may be carried forward indefinitely and used to offset the
8 investor's state liability in any subsequent year in which
9 the investor has sufficient state liability, including a
10 year in which the investor also uses state offsets that are
11 allocated to that year.

12
13 (f) If the state liability that an investor does not
14 pay by virtue of the offsets earned under this article
15 would constitute a credit against another state liability
16 or tax if paid, the investor shall continue to earn the
17 credit as though the offset liability were paid by cash.

18
19 (g) An investor may transfer the offsets it earns
20 under this article to another investor provided that the
21 transferor delivers to the council within thirty (30) days
22 of the transfer a written notice indicating the name of the
23 transferee, the amount of offsets being transferred and the

1 year or years to which such offsets are allocable as
2 provided in subsection (b) of this section.

3

4 **9-12-807. Investment pace; distributions.**

5

6 (a) The WERI provider shall invest one hundred
7 percent (100%) of the pool offset amount with respect to a
8 particular pool in economic development projects approved
9 by the board.

10

11 (b) The WERI provider shall, within twenty-four (24)
12 months of the pool allocation date, invest no less than
13 fifty percent (50%) of the pool offset amount in economic
14 development projects and, within each twelve (12) months
15 thereafter, invest no less than an additional twenty-five
16 percent (25%) in each of the subsequent twelve (12) month
17 periods until one hundred percent (100%) of the pool offset
18 amount is invested. If, within the initial twenty-four
19 (24) month period or any twelve (12) month period
20 thereafter, the WERI provider fails to meet the investment
21 target of this subsection, the management fee for that
22 period shall be suspended until such time as the investment
23 targets that were missed have been met.

24

1 (c) The WERI provider may invest the WERI fund only
2 in economic development projects approved by the board as
3 defined in this article. Any amount of the WERI fund not
4 invested in economic development projects in accordance
5 with this article shall be placed in:

6

7 (i) A financial institution located in Wyoming
8 that is a member of the federal deposit insurance
9 corporation; or

10

11 (ii) Debt instruments issued by, or guaranteed
12 with respect to payment by, an entity whose unsecured
13 indebtedness is rated at the time of purchase at least AA
14 or its equivalent by a nationally recognized credit rating
15 organization.

16

17 (d) Other than as provided in subsection (a) of this
18 section, until such time that the WERI provider invests one
19 hundred percent (100%) of the pool offset amount with
20 respect to a particular pool in economic development
21 projects approved by the board, the WERI provider shall
22 make no payments or other distributions other than for WERI
23 costs as defined in this article.

24

1 (e) All amounts invested in economic development
2 projects by the WERI provider shall count toward each of
3 the investment requirements in this section, including
4 funds contributed by the WERI provider or an affiliate
5 thereof and funds returned to the WERI provider by or as a
6 result of a prior investment in an economic development
7 project.

8

9 (f) Any investment that is an economic development
10 project at the time of the WERI provider's initial
11 investment shall be classified as an economic development
12 project for any follow-on investment by the WERI provider.

13

14 (g) The board shall approve or reject a proposed
15 investment as an economic development project, as the case
16 may be, within twenty (20) days of its receipt of a written
17 request from the WERI provider. If the board fails to
18 respond within the twenty (20) day period, the proposed
19 investment shall be deemed to be approved as an economic
20 development project, as requested by the WERI provider.

21

22 **9-12-808. Reporting and regulatory oversight.**

23

1 (a) The council shall receive an annual fee of
2 twenty-five thousand dollars (\$25,000.00) on or before
3 January 31 of each calendar year, from the WERI provider
4 which shall be deposited in an account within the earmarked
5 revenue fund. Monies in the account are continuously
6 appropriated to the council to be used only to defray the
7 administrative costs associated with the implementation of
8 this article.

9

10 (b) Within thirty (30) days of a pool allocation
11 date, the WERI provider shall report to the council the:

12

13 (i) Name of each investor from whom an
14 investment was received;

15

16 (ii) Amount of each investor's investment; and

17

18 (iii) Date on which the funds from each investor
19 were received.

20

21 (c) Within ninety (90) days of an economic
22 development project investment made by the WERI provider,
23 the WERI provider shall report to the council:

24

1 (i) The name and address of each project
2 receiving the investment and a description of its business;

3

4 (ii) The amount of the investment and a brief
5 description of the terms;

6

7 (iii) The date on which the money was received;
8 and

9

10 (iv) Any other information required by the
11 council.

12

13 (d) Not later than each anniversary of the pool
14 allocation date for each pool, the WERI provider shall
15 report to the council the amount the WERI provider has
16 invested in economic development projects during the
17 previous year and the percentage of the WERI funds
18 invested.

19

20 (e) Not later than April 30 of each year, the WERI
21 provider shall provide to the council an annual audited
22 financial statement for the WERI provider that includes the
23 opinion of an independent accountant.

24

1 (f) Upon making investments from a pool in economic
2 development projects equaling one hundred percent (100%) of
3 the pool offset amount, the WERI provider shall no longer
4 be subject to this article with respect to that pool;
5 provided that this article shall continue to govern any
6 pools that have not yet been fully invested.

7

8 (g) The council shall report to the insurance
9 commissioner annually, before February 1, the amount of
10 investments by each investor qualifying for offsets against
11 state liability as provided in this article.

12

13 **Section 2.** W.S. 9-12-102(a)(viii) is amended to read:

14

15 **9-12-102. Definitions.**

16

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

20

21 (viii) "This act" means W.S. 9-12-101 through
22 ~~9-12-603~~ 9-12-808.

23

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

5

6

(END)