SENATE FILE NO. SF0034

Beginning agricultural producer finance authority.

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

A BILL

for

AN ACT relating to administration of government; creating the beginning agricultural producer finance authority; creating duties and powers of the authority; providing for administration of the authority as specified; providing for directors of the authority; providing for beginning agricultural producer bonds as specified; authorizing state and other investment in bonds of the authority; requiring a report; and providing for an effective date.

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

Section 1. W.S. 9-12-1201 through 9-12-1218 are created to read:

ARTICLE 12

BEGINNING AGRICULTURAL PRODUCER FINANCE AUTHORITY

9-12-1201. Short title.

This article shall be known and may be cited as the "Beginning Agricultural Producer Finance Authority Act".

9-12-1202. Definitions.

(a) As used in this article:

(i) "Agricultural enterprise" means the real and personal property constituting farms and ranches and other agricultural endeavors the authority wishes to include within the provisions of this article;

(ii) "Authority" means the beginning agricultural producer finance authority created pursuant to this article;

(iii) "Beginning agricultural producer" is a person who has never had any direct or indirect ownership interest in substantial farmland, as defined by title 26, section 147 of the United States Internal Revenue Code;

(iv) "Board" means the board of directors of the authority;

(v) "Bonds" means bonds, notes and certificates, and bond, grant or revenue anticipation notes or any other evidence of indebtedness representing an obligation to pay money;

(vi) "Cost" means the cost of land, improvements or depreciable agricultural property;

(vii) "Lender" means any institution or association qualified within this state to originate and service loans.

9-12-1203. Creation of authority; powers.

(a) There is created the beginning agricultural producer finance authority, with powers and duties as are hereinafter provided.

(b) The authority may:

(i) Have perpetual succession as a body politic and corporate exercising essential public functions;

(ii) Adopt, amend and repeal bylaws, rules and regulations not inconsistent with this article, regulate its affairs, carry into effect the powers and purposes of the authority and conduct its business consistent with the provisions of this article;

(iii) Sue and be sued in its own name;

(iv) Have an official seal and alter it at will;

(v) Maintain an office at such place or places within the state as it may designate;

(vi) Make and execute contracts and all other instruments necessary or convenient for the performance of its duties and the exercise of its powers and functions under this article;

(vii) Employ persons as may be required and engage the services of private consultants and legal counsel to render professional and technical assistance and advice in carrying out the purposes of this article;

(viii) Procure insurance against any loss in connection with the property and other assets, including loans and loan notes in such amounts and from such insurers as it may deem advisable;

(ix) Borrow money and issue bonds, notes, bond anticipation notes or other obligations for any of its corporate purposes and fund or refund such obligations as provided in this article;

(x) Receive and accept from any source aid or contributions of monies, property, labor or other things of value to be held, used and applied to carry out the purposes of this article subject to the conditions upon which the grants or contributions are made, including, but not limited to, gifts or grants from any department, agency or instrumentality of the United States for any purpose consistent with the provisions of this article;

(xi) Enter into agreements with any department, agency or instrumentality of the United States or this state and with lenders or others and enter into loan agreements, sales contracts and leases and other financing arrangements with a beginning agricultural producer or other contracting parties in connection with the authority or for the purpose of planning, regulating and providing for the financing or refinancing of any agricultural enterprises;

(xii) Enter into contracts or agreements with lenders for the servicing and processing of loans or with any person or entity providing credit enhancement for the bonds of the authority;

(xiii) To the extent permitted under its contract with the holders of bonds of the authority, consent to any modification with respect to the rate of interest, time and payment of any installment of principal or interest, or any other term of any contract, loan, loan note, loan note commitment, contract, lease or agreement of any kind to which the authority is a party;

(xiv) To the extent permitted under its contract with the holders of bonds of the authority, enter into contracts with any lender containing provisions enabling the authority to reduce the rental or carrying charges to persons unable to pay the regular schedule or charges when, by reason of other income or payment by any department, agency or instrumentality of the United States or of this state, the reduction can be made without jeopardizing the economic stability of the agricultural enterprise being financed;

(xv) Invest proceeds of any bonds not needed for immediate disbursement in any investment permitted under the constitution and laws of this state;

(xvi) Collect fees and charges, as the authority determines to be reasonable, in connection with its loans, advances, insurance, commitments, servicing and other activities;

(xvii) Cooperate with and exchange services, personnel and information with any federal, state or local governmental agency;

(xviii) Sell, at public or private sale, with or without public bidding, any loan or other obligation held by the authority;

(xix) Mortgage, pledge, assign or grant security interests in any or all of its notes or other instruments, contract rights or other property, including, but without limitation to, any receipts from insurance on or guarantees of any of its notes or other instruments, as security for the payment of the principal of, premium, if any, and interest on any bonds issued by the authority, or as security for any credit enhancement or other agreements made in connection therewith, whether then owned or thereafter acquired, and to pledge the revenues from which the bonds are payable and any other available revenues or assets as security for the payment of the principal of, premium, if any, and interest on the bonds and any agreements made in connection therewith;

(xx) Do any act and execute any instrument which in the authority's judgment is necessary or convenient to the exercise of the powers granted by this article;

(xxi) Assign the loans or security documents or other instruments to bondholders as security without recourse.

9-12-1204. Board of directors; duties; elections; compensation.

(a) The board of directors of the authority shall consist of five (5) members appointed by the chairman of the Wyoming business council. The board of directors shall include: one (1) member of the Wyoming business council, who shall be the chairman of the board; one (1) member of the Wyoming board of agriculture; one (1) livestock producer; one (1) crop producer; and one (1) at-large member. The board members shall be appointed annually and shall serve no more than three (3) consecutive one (1) year terms.

(b) The board shall administer the authority and make annual recommendations to the legislature and governor on programs to develop and promote agricultural enterprises in this state.

(c) The authority shall annually elect from its members any officers it deems advisable. A majority of the members constitutes a quorum. The board shall meet at the call of the chairman or a majority of the members.

(d) Members of the authority shall receive no compensation for their services but shall receive an allowance per day for the time spent in attending and traveling to and from meetings of the authority, and expenses and travel allowance pursuant to W.S. 9-3-102.

9-12-1205. Borrowing power of authority.

(a) The authority may:

(i) Borrow funds and issue its bonds from time to time and in principal amounts as the authority deems necessary to carry out its purposes under this article, including the payment of interest on its bonds, the establishment of reserves to secure the bonds, and payment of other expenses necessary, convenient and incident to fulfillment of its purposes;

(ii) Issue from time to time bonds to renew or to pay bonds, including the interest or premium thereon, and whenever it deems refunding expedient, to refund any bonds and to pay costs of issuance of the refunding bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and to issue bonds partly to refund outstanding bonds and partly for any other of its corporate purposes. The refunding bonds may be sold and the proceeds applied to the purchase, redemption or payment of the bonds to be refunded, or exchanged for the bonds to be refunded.

9-12-1206. Authority bonds not state or subdivision obligation.

Obligations issued under the provisions of this article shall not be deemed to constitute a debt, liability or obligation of the state or of any political subdivision thereof, nor a pledge of the full faith and credit of the state or any political subdivision, but shall be payable solely as provided in this article. Each obligation issued under this article shall contain on the face thereof a statement to the effect that neither the full faith and credit, nor the taxing power of the state, or of any political subdivision thereof is pledged to the payment of the principal of or the interest on such obligation. All obligations of the authority issued under the provisions of this article shall be authority bonds or notes and shall not be general obligations of the state of Wyoming.

9-12-1207. Bond authorization; terms and sale; interest rate; noninterest bearing bonds; redemption; negotiable; execution.

(a) The bonds shall be authorized by a resolution of the authority, shall bear such date or dates and shall mature at such time or times as the resolution or the instrument providing for the issuance of such bonds may provide, except that no bond may mature more than fifty (50) years from the date of its issue. The bonds shall bear interest at such rate or rates, be in such denominations, be in such form, either coupon or registered, be evidenced by physical certificates or uncertificated, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption, including redemption prior to maturity, as such resolution or the instrument providing for the issuance of such bonds may provide. No other state laws relating to the offer, sale or issuance of revenue bonds or any other security may apply to bonds issued by the authority. Bonds of the authority may be sold by the authority at public or private sale, and at such price or prices as the authority shall determine. The bonds of the authority may bear interest at a fixed, variable or adjustable rate (and may be convertible from one method of calculating interest to another) and such interest rate may be based upon any formula or contractual arrangement for the periodic determination of interest rates, all as may be established in the resolution or instrument providing for the issuance of such bonds. Any such formula or contractual arrangement may authorize the delegation of the interest rate setting function to a third party subject only to such standards or criteria as shall be set forth in the resolution or instrument providing for the issuance of such bonds. In no event may the setting or resetting of the rate of interest on the authority's bonds or the conversion from one method of determining interest to another constitute a reissuance or refunding of bonds issued by the authority if such action is taken in accordance with the resolution or instrument providing for the initial issuance of such bonds. The authority may issue noninterest bearing bonds or bonds bearing interest at a rate of zero percent (0%) and sell the same at such price or prices as may be determined by the authority.

(b) The authority, subject to such agreements with bondholders as may then exist, may purchase and cancel its bonds out of any funds available therefore, at any reasonable price which, if the bonds are then redeemable, may not exceed the redemption price then applicable plus accrued interest to the next interest payment thereon.

(c) Whether or not the bonds are in the form and character of negotiable instruments, the bonds are hereby made negotiable instruments, subject only to provisions of the bonds relating to registration.

(d) Bonds of the authority may be executed by the manual or facsimile signatures of the officers of the authority authorized by the resolution of the authority to execute such bonds. If such resolution authorizes or directs the affixing of the seal of the authority on bonds of the authority, such seal or a facsimile thereof may be impressed or imprinted thereon. In the event that any officer of the authority shall cease to be an officer of the authority prior to the delivery of any bonds or coupons signed by them, their signatures or facsimiles thereof shall nevertheless be valid and sufficient for all purposes, the same as if such members or officers had remained in office until such delivery.

9-12-1208. Pledges by authority.

Any pledge made by the authority shall be valid and binding from the time when the pledge is made. The revenue, money or properties so pledged and thereafter received by or on behalf of the authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority, irrespective of whether the parties have notice thereof. Neither the resolution nor the trust indenture, if any, nor any other instrument by which a pledge is created need be recorded.

9-12-1209. Immunity from personal liability on bonds.

Neither the members of the authority nor any other person executing the bonds issued under this article is subject to personal liability or accountability by reason of the issuance thereof.

9-12-1210. State pledge not to alter rights of authority to detriment of its bondholders.

The state does hereby pledge to and agree with the holder of any bonds issued under this article that the state will not limit or alter the rights vested in the authority to fulfill the terms of any agreements made with the holders thereof or in any way impair the rights or remedies of the holders until the bonds, together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of the holders, are fully met and discharged. The authority may include this pledge and agreement of the state in any agreement with the holders of the bonds.

9-12-1211. Bonds as authorized investments and securities for deposits.

The bonds and notes of the authority are hereby made securities in which all public officers and bodies of this state and all municipal subdivisions, all insurance companies and associations and other persons carrying on insurance business, all banks, bankers, trust companies, including savings and loan associations, building and loan associations, investment banking companies and other persons carrying on an investment banking business, all administrators, conservators, executors, trustees and other fiduciaries and all other persons who are now or may hereafter be authorized to invest in bonds or obligations of the state, may properly and legally invest in the bonds and notes of the authority funds including capital in their own control or belonging to them. The bonds and notes are also hereby made securities which may be deposited with and may be received by all public officers and bodies of this state and all municipalities and municipal subdivisions for any purpose for which the deposit of bonds or notes or other obligations of this state is now or may hereafter be authorized.

9-12-1212. Rules and regulations of authority.

(a) The authority may, pursuant to the Wyoming Administrative Procedure Act, adopt rules or regulations as it deems necessary or desirable to implement the purposes of this article, including, but not limited to:

(i) Setting forth the procedures for applicants to apply for loans under this article;

(ii) Establishing criteria, including rates, fees and other charges for originating or servicing loans and determining which applicants will receive such loans;

(iii) Governing the use of proceeds of such loans;

(iv) Establishing criteria for the terms and conditions upon which such loans shall be made, including the terms of security given, if any, to secure such loans;

(v) Governing the use of proceeds by lenders of funds advanced to such lenders by the authority including the terms and conditions upon which such proceeds shall be loaned to borrowers for the purposes described in this article.

9-12-1213. Construction with other laws.

Insofar as the provisions of this article are inconsistent with the provisions of any other law, the provisions of this article shall be controlling.

9-12-1214. Liberal construction of article.

This article, being necessary for the welfare of the state and its inhabitants, shall be liberally construed so as to effectuate its purposes.

9-12-1215. Disposition of authority assets on dissolution.

If, after all indebtedness and other obligations of the authority are discharged, the authority is dissolved, its remaining assets shall inure to the benefit of the state.

9-12-1216. Report to governor and legislature.

(a) The authority shall submit to the governor and the management council within ninety (90) days of the close of its fiscal year a complete and detailed report setting forth:

(i) Its operations and accomplishments;

(ii) Its receipts and expenditures during such fiscal year in accordance with the categories or classifications established by the authority for its operating and capital outlay purposes;

(iii) Its assets and liabilities at the end of its fiscal year, including a schedule of its loans and commitments and the status of reserve, special or other funds; and

(iv) A schedule of its notes and bonds outstanding at the end of its fiscal year, together with a statement of the amounts redeemed and incurred during such fiscal year.

9-12-1217. Compliance with Internal Revenue Code.

Notwithstanding any provision under the laws of this state, the authority in order to accomplish the purposes provided in this section and this article may perform all acts necessary to comply with the requirements of title 26, § 103 of the Internal Revenue Code of 2000, as amended, and any regulation promulgated pursuant to § 103 to insure that all interest from bonds issued under this article are tax exempt. All hearings or acts necessary to comply with § 147(f) of the Internal Revenue Code of 2000, as amended, and any regulations promulgated pursuant to § 147(f) are exempt from the requirements and procedures of the Wyoming Administrative Procedure Act. The governor is the approving representative for the state for the purpose of complying with the applicable provisions of § 147(f) of the Internal Revenue Code of 2000, as amended, and any regulations promulgated pursuant to § 147(f) necessary to insure that all interest from bonds issued are tax exempt.

9-12-1218. Confidentiality of borrower information.

All financial information submitted by the borrower to the board shall be confidential.

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

(END)