HOUSE BILL NO. HB0053

Minerals to value added product facility fund program.

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

A BILL

for

AN ACT relating to economic development; creating the mineral to value added products facility program; providing for administration of the program by the Wyoming business council; providing requirements to participate in the program; providing for adequate consideration and other prerequisites for approval of a contract under the program by the state loan and investment board; creating an account; restricting expenditures from the account as specified; providing rulemaking authority; requiring a report; providing definitions; providing legislative findings; and providing for an effective date.

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

Section 1. W.S. 9-20-101 through 9-20-105 are created to read:

CHAPTER 20

WYOMING VALUE ADDED PRODUCT FACILITY PROGRAM

9-20-101. Legislative findings and intent.

(a) The legislature finds that the state of Wyoming has an abundance of natural mineral resources which provide the basis of the state's economy. The vast majority of Wyoming's extracted mineral wealth is consumed or converted to higher value products outside of the state of Wyoming.

(b) The legislature finds that it is in the interest of the state of Wyoming to encourage the development of industries in this state which convert the state's mineral resources to higher valued products prior to exportation from the state.

(c) The legislature finds that to promote the development of facilities which convert minerals to value added products in the state of Wyoming it may be necessary for the state to enter into ventures with private entities which own and operate value added facilities. This act creates a program whereby the state of Wyoming may enter into a contract to provide feedstock minerals to a mineral to value added product facility, pay a tolling fee to the operator for the conversion of the feedstock to a higher value product and receive the sale price of the value added product, less any reasonable fees negotiated between the state of Wyoming and the operator of the facility.

(d) It is the intent of the legislature that any contract entered into under this act will produce a positive return on the funds committed by the state of Wyoming.

(e) The legislature finds that a program to encourage the development of minerals to value added products in Wyoming will benefit the state of Wyoming and serves a public purpose for the citizens of the state of Wyoming by creating additional revenues for the state, diversifying the state's economy and providing employment opportunities for citizens of the state.

9-20-102. Definitions.

(a) As used in this article:

(i) "Account" means the mineral to value added product facility program account created pursuant to W.S. 9-20-105(a);

(ii) "Escalator clause" means a negotiated provision in a contract which provides for a modification in the tolling agreement if a particular specified factor affecting the value of the tolling agreement has been reached. Any contract negotiated under this act containing an escalator clause shall provide sufficient specificity so that both parties to the contract can identify any trigger point or event which will enable the escalator clause;

(iii) "Mineral to value added product facility" includes a commercial scale mineral to liquid fuels or other value added products facilities but shall not include any facility which will derive fifty percent (50%) or more of its anticipated revenues from the generation of electricity;

(iv) "Program" means the mineral to value added product facility program created pursuant to W.S. 9-20-103(a);

(v) "Tolling agreement" means a negotiated fee for the conversion of a feedstock mineral provided by the state of Wyoming under a contract with the operator of a value added facility;

(vi) "This act" means W.S. 9-20-101 through 9-20-105.

9-20-103. Wyoming mineral to value added product program; rulemaking authority.

(a) There is created the Wyoming mineral to value added product program. The program is intended to aid economic development of the state by providing mineral product input guarantees to enable the recruitment and operation of commercial scale mineral to value added product facilities, which have demonstrated proof of performance.

(b) The Wyoming business council shall establish and administer the program under this act. Any commercial scale mineral to value added products facility may submit an application to the Wyoming business council to participate in the program on forms prescribed by and subject to rules promulgated by the Wyoming business council.

(c) After an application to participate in the program is approved by the state land and investment board, the Wyoming business council may contract to supply not more than twenty percent (20%) of the expected mineral supply to the facility for the duration of the contract. Total contract amounts for any one (1) facility shall be set by rule of the state loan and investment board based on the provisions of this act and the expected return to the state of Wyoming, but in no event shall a contract exceed fifty million dollars ($50,000,000.00).

(d) All complete applications to participate in the commercial scale mineral to value added product facility fund program established under this act which conform to the criteria established by this act and rules and regulations promulgated hereunder, shall be considered. The Wyoming business council shall review the application and may communicate directly with the applicant. A determination by the state land and investment board to approve or disapprove an application under this act is not appealable.

(e) If the Wyoming business council receives multiple applications to enter a contract under the program, consideration of acceptance of an application shall be given to whether the applicant has demonstrated a past record of producing jobs in Wyoming and whether the applicant has and is likely to maintain a nexus to the state of Wyoming.

9-20-104. Criteria and procedures for contracts.

(a) In determining whether to recommend or approve a contract under this act, the Wyoming business council and state loan and investment board shall consider if:

(i) There are sufficient funds in the account to fully fund the contract and all other outstanding commitments to the account;

(ii) The contract establishes the terms and conditions of the contract as required by this act, including, but not necessarily limited to:

(A) The duration of the contract to provide feedstock minerals;

(B) Criteria to determine proof of performance on the part of the mineral to value added facility prior to expenditure of funds by the state of Wyoming under the contract;

(C) Tolling fees and any escalator clauses for the conversion of the state's feedstock to a value added product;

(D) Procedures and mechanisms for the sale of the finished product produced under the contract and the deposit of the proceeds of those sales to the account.

(iii) The applicant has demonstrated a business plan, balance sheet, sufficient cash flow, commitments to sell the finished product and other indices as determined by rule and regulation of the Wyoming business council necessary to demonstrate their ability to perform under the contract.

(b) Contracts entered under this act shall be subject to the following procedures:

(i) Any project shall first be submitted to and reviewed by the governor who may provide preliminary recommendations for the size and parameters of the proposed contract;

(ii) The project shall then be submitted to the Wyoming business council for review and determination under the process set forth in W.S. 9-12-601 through 9-12-603 and to provide preliminary recommendations for the structure of the proposed contract;

(iii) The Wyoming business council's recommendations shall be forwarded to the state loan and investment board for final consideration of the contract.

(c) The Wyoming business council shall only recommend, and the state loan and investment board shall only approve, entering into contracts under this act for commercial scale mineral to value added products facility projects which meet the following minimum requirements:

(i) Are anticipated to have a beneficial economic impact to the state of Wyoming and provide the following minimum public benefits:

(A) The creation of a significant expansion of permanent jobs in the county or counties in which the project will be located;

(B) A significant increase in the assessed valuation of the county or counties in which the projects will be located;

(C) A substantial increase in the sales, property or other tax revenues to the county or counties where the project will be located;

(D) Promotion of a stable, balanced and diversified economy; and

(E) Private investment in the county or counties in buildings, equipment and direct project infrastructure of not less than three (3) times the amount of any contract.

(ii) Provide adequate consideration for the state of Wyoming to enter the contract;

(iii) The feedstock materials supplied under the contract shall have been produced exclusively or substantially in Wyoming;

(iv) The contract shall not create debt of the state of Wyoming beyond the current year's taxes; and

(v) The terms of the contract are such that the state of Wyoming is likely to realize a positive return on its investment under the contract.

(d) No contract shall be entered into under this act without the written opinion of the attorney general certifying the legality of the transaction and all documents connected therewith.

(e) The governor, Wyoming business council or state loan and investment board is authorized to employ such experts as necessary to fully evaluate and negotiate the terms and conditions of a contract under this act. If experts are retained, the cost for the experts shall be paid by the applicant.

9-20-105. Wyoming mineral to value added product program account; purpose; creation; rulemaking.

(a) There is created a commercial scale mineral to value added product program account. Funds in the account shall be used exclusively to promote commercial scale mineral to value added product facilities as provided in this act.

(b) Funds appropriated by the legislature for the program shall be deposited into the account. All funds in the account are continuously appropriated for contracts and other expenses authorized under this act. The total principal balance of outstanding contracts shall not exceed the amounts appropriated by the legislature plus revenues accrued and collected less any losses, currently available in the account.

(c) Any unexpended balance in the account shall be invested by the state treasurer and the interest earned shall be credited to the account.

(d) Revenues generated from any contract entered into under this act shall be deposited into the account and continuously appropriated to the Wyoming business council to be expended solely for the purpose of administering this act and contracts authorized hereunder, except as provided in subsection (e) of this section.

(e) The Wyoming business council shall report by November 1 of each year to the joint appropriations interim committee and the joint minerals, business and economic development interim committee on the status and condition of the program and the account. The report required under this subsection, and all its contents, shall be a public record. In addition to factors listed in this subsection, the Wyoming business council's report shall include the account fund balance and anticipated potential expenditures, including contracts, under the program for the next three (3) fiscal years, respectively. The joint appropriations interim committee shall then determine whether to introduce legislation to appropriate a portion, or all, of the funds in the account for purposes other than the program. The report shall further include:

(i) A review of rules adopted by the Wyoming business council or state loan and investment board during the reporting period;

(ii) The portfolio of contracts entered into under the program;

(iii) A risk analysis of the portfolio;

(iv) Any other relevant information as determined by the state loan and investment board or the Wyoming business council.

Section 2. The Wyoming business council and the office of state lands and investments shall develop rules and regulations for the implementation of the program developed under this act as soon as practicable after the effective date of this act.

Section 3. This act is effective July 1, 2015.

(END)