

**DRAFT ONLY  
NOT APPROVED FOR  
INTRODUCTION**

HOUSE BILL NO. [BILL NUMBER]

Environmental quality council-voting.

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

A BILL

for

1 AN ACT relating to environmental quality; specifying voting  
2 and attendance procedures of the environmental quality  
3 council; making a conforming amendment; and providing for an  
4 effective date.

5

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

7

8 **Section 1.** W.S. 35-11-111(d) and (e) is amended to read:

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10 **35-11-111. Independent environmental quality council**  
11 **created; removal; terms; officers; meetings; expenses.**

12

(d) The council shall hold at least four (4) regularly scheduled meetings each year. Special meetings may be called by the chairman, and special meetings shall be called by the chairman, upon a written request submitted by three (3) or more members. Four (4) members participating in a matter in person, by phone or by real-time audio or video electronic means shall constitute a quorum. All matters shall be decided by a majority vote of those ~~on the council members~~ participating in the matter. For purposes of voting, a member who has recused himself from a matter, an absent member, a member who is unable to participate in proceedings due to illness or incapacity and a vacant position on the council shall be deemed to be not participating in the matter.

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STAFF COMMENT

There may be a significant concern with the new language proposed for W.S. 35-11-111(d). By specifying with some detail how a member can attend a meeting and what constitutes a quorum for the Environmental Quality Council, the new language may call into question whether a member of another board or commission participating by phone or video can count for purposes of establishing a quorum when that board's or commission's statutes are silent on methods of participation and ways to establish a quorum beyond providing a specific number of members.

Ultimately, it is unclear how a court would view a challenge to another board's or commission's procedures in light of

1 this statutory change. "[T]he omission of words from a statute  
 2 is considered to be an intentional act by the legislature and  
 3 [the Wyoming Supreme Court] will not read words into a statute  
 4 when the legislature has chosen not to include them." Morris  
 5 v. CMS Oil & Gas Co., 2010 WY 37, ¶ 28, 227 P.3d 324, 333  
 6 (Wyo. 2010). The Court presumes "that the legislature acts  
 7 intentionally when it uses particular language in one  
 8 statute, but not in another." Rodriguez v. Casey, 2002 WY  
 9 111, ¶ 10, 50 P.3d 323, 327 (Wyo. 2002). At the same time,  
 10 the Court notes that interpretation of statutes "should not  
 11 produce an absurd result." Sanderson v. Bathrick (In re  
 12 Seader), 76 P.3d 1236, 1244 (Wyo. 2003). While it is unclear  
 13 how a challenge may be resolved, a court may conclude that  
 14 other boards and commissions can establish quorums only  
 15 through members who are physically present.

16  
 17 In order to resolve this issue, the Committee could amend all  
 18 statutes regarding the constitution of a quorum and insert  
 19 similar language in those sections. The Committee could also  
 20 remove the inserted language in page 2, lines 5-7.  
 21 Alternatively, the Committee could omit the inserted language  
 22 in page 2, lines 5-7 and instead insert a non-codified section  
 23 directing the Environmental Quality Council to promulgate  
 24 rules related to attendance and meeting procedures and  
 25 specify that the council must have rules that allow attendance  
 26 by phone or real-time audio or video means and that a member  
 27 who attends by one of those methods counts for purposes of  
 28 establishing a quorum.

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 30 \*\*\*\*\*  
 31 \*\*\*\*\*  
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33 (e) Unless otherwise prohibited by law, each member of  
 34 the council shall receive the same per diem, mileage and  
 35 salary for attending and traveling to and from meetings,  
 36 hearings and other activities necessary to the performance of  
 37 the duties of the office in the same manner and amount as  
 38 members of the Wyoming legislature. Council members who

1 participate in a meeting, hearing or other activity by phone  
2 or real-time electronic means shall receive salary for the  
3 meeting, hearing or other activity. Council members who  
4 receive compensation from their employers for activities  
5 performed pursuant to this act shall not receive salary but  
6 shall receive mileage and per diem if they are not reimbursed  
7 by their employers.

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11 **STAFF COMMENT**

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13 The inserted sentence in subsection (e) is a conforming  
14 amendment meant to address salary for council members who  
15 attend a meeting by phone or computer. For now, the language  
16 is based on legislative practice. The Committee will need to  
17 decide whether a council member who participates in a matter  
18 by phone or computer is "attending" the meeting, hearing, or  
19 other activity.

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24 **Section 2.** This act is effective July 1, 2019.

25  
26 (END)