

ENROLLED ACT NO. 42, SENATE

FIFTY-SEVENTH LEGISLATURE OF THE STATE OF WYOMING
2004 BUDGET SESSION

AN ACT relating to the Wyoming infrastructure authority; creating the authority; defining composition, purposes, powers and duties of the authority; providing for the planning, constructing, financing, maintaining and operating of electric transmission facilities and related infrastructure by the authority; authorizing the issuance of revenue bonds or other obligations payable from revenues of the authority; providing terms and procedures for the issuance of bonds and other obligations; providing for disposition of revenue of the authority; specifying legislative findings; authorizing state investment in bonds of the authority; authorizing financing of other projects by the authority; providing for reports and recommendations; providing an appropriation for a loan to the authority and for repayment; and providing for an effective date.

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

Section 1. W.S. 37-5-301 through 37-5-307 and 37-5-401 through 37-5-408 are created to read:

ARTICLE 3

WYOMING INFRASTRUCTURE AUTHORITY PROJECTS

37-5-301. Wyoming infrastructure authority.

(a) There is created the Wyoming infrastructure authority, hereinafter called the "authority", which is a body corporate operating as a state instrumentality, with authority to adopt an official seal and to sue and be sued.

(b) The authority shall be governed by a board composed of five (5) members appointed by the governor, with the advice and consent of the senate. The members of

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the initial board shall be appointed for staggered terms, two (2) members for terms of one (1) year each and the other members for terms of two (2), three (3) and four (4) years, respectively, as designated at the time of appointment. Thereafter all members shall be appointed for four (4) year terms. The governor may remove any member as provided in W.S. 9-1-202. Vacancies shall be filled by appointment by the governor in accordance with W.S. 28-12-101. The members shall elect from the membership a chairman, vice-chairman and secretary. A majority of persons appointed and serving as members shall be qualified voters of the state of Wyoming with special knowledge, as evidenced by college degrees or courses, or with at least five (5) years experience in managerial positions, in the field of electric transmission or generation development, or natural gas or coal production, transportation, marketing or industrial or municipal consumption. Members of the board may receive the same per diem, expenses and travel allowance as members of the legislature while in actual attendance at meetings of the board and the performance of their duties relative thereto.

(c) Any agency, board, commission, department or institution of the state and the governing authorities of political subdivisions, may make surveys, reports and investigations, and furnish records and information and other assistance and advice as may be required by the authority.

37-5-302. Definitions.

(a) As used in this article and W.S. 37-5-401 through 37-5-408:

(i) "Authority" means the Wyoming infrastructure authority created by W.S. 37-5-301(a);

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

(iii) "Facilities" means electric transmission facilities and related supporting infrastructure, including any interests therein.

37-5-303. Purposes.

(a) The purpose for which the authority is created is to diversify and expand the Wyoming economy through improvements in the state's electric transmission infrastructure and to facilitate the consumption of Wyoming energy by planning, financing, constructing, developing, acquiring, maintaining and operating electric transmission facilities and related supporting infrastructure and undivided or other interests therein to facilitate the transmission of energy. In order to provide for the financing, construction, development, maintenance, upgrade and operation of existing and new electric transmission facilities, the authority may own, lease or rent facilities constructed pursuant to the authority conferred herein, and all facilities, structures and properties incidental and necessary thereto, to facilitate the transmission of energy.

(b) The facilities and related supporting infrastructure may include all facilities, structures and properties incidental and necessary or useful in the transmission of electric energy.

(c) The authority shall establish and collect fees, schedule of fees, rentals and other charges for the use of the facilities of the authority as the board may determine, and may borrow funds for the execution of the purposes of

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the authority, and mortgage and pledge any lease or leases granted, assigned or subleased by the authority.

(d) Except as provided in this section, the authority shall not exercise any of the rights or powers granted to it in this section, if private persons, firms, or corporations are performing the acts, constructing or have constructed the facilities, or are providing the services contemplated by the authority, and are willing to finance and own new infrastructure to meet an identified need and market. Prior to exercising any rights or powers granted to it in this section, the authority shall publish in a newspaper of general circulation in Wyoming, and in a newspaper and trade magazine in the area where the facilities or services are contemplated, in the manner prescribed by law, a notice describing the acts, facilities, or services contemplated by the authority, and private persons, firms or corporations willing and able to perform the acts, finance and own, and construct the facilities or provide the services described in the notice shall have a period of thirty (30) days from the date of last publication of the notice within which to notify the authority of intention and ability to perform the acts, finance and construct the facilities, or provide the services described in the notice. In the absence of notification by a private person, firm or corporation, or if a person, firm or corporation, having given notice of intention to perform the acts, finance and construct the facilities, or provide the services contemplated by the authority, fails to commence the same within one hundred eighty (180) days from the date of notification of the authority of its intention, the authority may proceed to perform the acts, construct the facilities or provide the services originally contemplated. A private person, firm or corporation that has made necessary applications to acquire any federal, state, local or private permits,

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certificates or other authorizations or approvals necessary to perform the acts, construct the facilities or provide the services within the time required is deemed to have commenced the same. The authority may require that any person giving notice of intention to perform the acts, finance and construct the facilities, or provide the services contemplated by the authority, submit a plan for completion of the facility within three (3) years from notification to the authority. The authority may also require the person to provide a bond to pay liquidated damages to the authority for the person's failure to perform the acts, finance and construct facilities or provide the services contemplated by the authority. The authority shall not be precluded from maintaining any other action for the person's failure to perform.

37-5-304. Powers of the authority.

(a) In exercising the rights and powers granted to it, the authority shall be vested with authority to:

(i) Employ officers, agents and employees as it deems necessary for the performance of its powers and duties and prescribe the powers and duties and fix the compensation of the officers, agents and employees;

(ii) Contract, upon terms as it may agree upon, for legal, financial, engineering and other professional services necessary or expedient in the conduct of its affairs;

(iii) Utilize the services of executive departments of the state upon mutually agreeable terms and conditions;

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(iv) Plan, finance, construct, develop, acquire, own, maintain and operate within and outside the state of Wyoming, property, structures, equipment, facilities and works of public improvement necessary or useful for the accomplishment of the purposes for which the authority was created, including the obtaining of permits and the acquisition of rights of way;

(v) Acquire by condemnation within the state of Wyoming any properties necessary or useful for its purposes, provided the authority shall not have the right to condemn mineral leases, gas supplies, gas reserves, oil refineries, existing electric transmission, distribution and generation facilities, minerals, water rights, mineral rights or pipelines used in connection therewith;

(vi) Receive by gift, grant, donation or otherwise, any sum of money, aid or assistance from the United States, the state of Wyoming, any political subdivision or any other public or private entity;

(vii) Provide light, water, communications, security and other services for its facilities as it deems advisable;

(viii) After consultation with the public service commission and any other relevant governmental authority, establish and charge reasonable fees, rates, tariffs or other charges for the use of all facilities administered by the authority and for all services rendered by it;

(ix) In whole or in part, operate, lease, rent and dispose of facilities constructed pursuant to the authority conferred herein, and all facilities, structures and properties incidental and necessary thereto;

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(x) Investigate, plan, prioritize and establish corridors for the transmission of electricity;

(xi) Enter into partnerships with public or private entities; and

(xii) Do any and all things necessary or proper for the development, regulation and accomplishment of the purposes of the authority within the limitations of authority granted by this article and W.S. 37-5-401 through 37-5-408.

37-5-305. Bonds.

(a) In addition to the powers otherwise herein granted to the authority, in order to accomplish its purposes and finance projects it owns, it shall have the power to borrow money and evidence the borrowing in the issuance and sale of bonds or other obligations of the authority, the principal and interest of which shall be payable solely out of revenues herein authorized to be dedicated and pledged for the payment.

(b) Bonds issued under authority of this section shall be solely the obligation of the authority and shall recite on their face that they do not constitute obligations of the state of Wyoming or any county, municipality or other political subdivision of the state. The bonds or other obligations shall be authorized and issued by resolution of the authority and shall be of the series, bear the date or dates, mature at the time or times, bear interest at the rate or rates, be in the form, carry the registration and exchangeability privileges, be payable in the medium of payment and at the place or places, be subject to the terms of redemption and be

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entitled to the priorities on the revenues of the authority, as the resolution may provide. The bonds shall be executed in the form and manner provided by the resolution authorizing their issuance.

(c) The bonds or other obligations issued under authority of this section may be sold by the authority at, above or below par value, at public or private sale, in a manner and from time to time as determined by the authority.

(d) Any bonds issued hereunder shall be payable from and be secured by the pledge of the revenues derived from the operation of the electric transmission facilities, as constructed, acquired, extended or improved with the proceeds of the bonds, subject only to prior payment of the reasonable and necessary expenses of operating and maintaining the facilities. Any bonds issued hereunder may also be payable from unexpended bond proceeds. Any holder of the bonds may by appropriate legal action compel performance of all duties required of the authority in order to enforce payment of the bonds when due. If any bond issued hereunder is permitted to go into default as to principal or interest, any court of competent jurisdiction may, pursuant to the application of the holder of the bonds, appoint a receiver for the facilities, who shall operate the same and collect and distribute the revenues thereof pursuant to the provisions and requirements of the resolution authorizing the bonds.

(e) If more than one (1) series of bonds is issued payable from the revenues of the facilities or bond proceeds, priority of lien on the revenues shall be as provided by the resolution authorizing the bonds.

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(f) All bonds issued under the provisions of this section shall constitute negotiable instruments within the meaning of the Uniform Commercial Code. The bonds and the income thereof shall be exempt from all taxation within the state of Wyoming.

(g) No board or commission other than the board of the authority shall have authority to fix or supervise the making of fees and charges hereafter stated, which shall be in amounts reasonably necessary for the purposes herein stated. When the authority has issued bonds and pledged the revenues of the facilities for the payment thereof as herein provided, the authority shall operate and maintain the facilities and shall impose and collect fees and charges for the services furnished by the facilities, including those furnished to the authority itself, in the amounts and at the rates as shall be fully sufficient at all times to:

(i) Pay the expenses of operating and maintaining the facilities;

(ii) Provide a sinking fund sufficient to assure the prompt payment of principal and interest on the bonds as each falls due;

(iii) Provide a reasonable fund for contingencies as may be required by any bond underwriting or by the resolution authorizing the bonds; and

(iv) Provide an adequate depreciation fund for repairs, extensions and improvements to the facilities.

(h) Any resolution of the board of the authority authorizing the issuance of bonds shall be published once in a newspaper of general circulation published in the city

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of Cheyenne, and in a newspaper in the area where the facilities or services are contemplated. For a period of thirty (30) days from the date of the publication any person in interest may contest the legality of the resolution and of the bonds to be issued pursuant thereto and the provisions securing the bonds, including the validity of any lease or other contract pledged to the payment thereof. After the expiration of thirty (30) days no one shall have any right of action to contest the validity of the bonds, the validity of the security pledged to the payment thereof or the provisions of the resolution pursuant to which the bonds were issued, and all the bonds and all proceedings relating thereto shall be conclusively presumed to be legal.

(j) The board of the authority may authorize the issuance of bonds for the purpose of refunding, extending and unifying the whole or any part of the principal, interest and redemption premiums on any outstanding bonds issued under the authority of this article or W.S. 37-5-403. The refunding bonds may either be sold and the proceeds applied to or deposited in escrow for the retirement of the outstanding bonds, or may be delivered in exchange for the outstanding bonds. The refunding bonds shall be authorized in all respects as original bonds are herein required to be authorized. The board of the authority in authorizing the refunding bonds, shall provide for the security of the bonds, the sources from which the bonds are to be paid and for the rights of the holders thereof in all respects as herein provided for other bonds issued under the authority of this article or W.S. 37-5-403. The board may also provide that the refunding bonds shall have the same or different priority of lien on the revenues pledged for their payment as was enjoyed by the bonds refunded.

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37-5-306. Use of net revenues.

The authority, acting alone or in cooperation with any agency of the state of Wyoming may use and employ any net revenues derived from the facilities herein authorized or from any other source, after providing for all the costs of maintenance and operation of the facilities and after making the required principal and interest payments on any revenue bonds issued and any other payments provided in any resolution or resolutions authorizing the issuance and sale of revenue bonds and obligations, in extending and improving the facilities as the board of the authority may determine to be warranted by the need for electric transmission facilities. If the board determines that no need exists, the net revenues shall be paid to the state treasurer for credit to the state general fund.

37-5-307. Authority not subject to public service commission.

Notwithstanding any other provisions of law to the contrary, the authority shall not be subject to the supervision, regulation, control or jurisdiction of the public service commission, and the fees, rates, rental and other charges and services of the authority shall not be subject thereto.

ARTICLE 4
FINANCING OF OTHER PROJECTS

37-5-401. Legislative findings.

(a) The legislature finds that:

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(i) There are in Wyoming extensive reserves of energy and insufficient facilities to warrant the timely development and marketing of those reserves;

(ii) Timely development of Wyoming energy sources will stabilize and increase revenue to the state;

(iii) New infrastructure will increase development of Wyoming energy sources;

(iv) It is in the public interest of the citizens of this state to promote the economic welfare of the state and its residents by increasing employment, stimulating economic activity, augmenting sources of tax revenue, fostering economic stability and improving the balance of the state's economy;

(v) This article constitutes a valid public purpose of primary benefit to all citizens of this state.

37-5-402. Definitions.

(a) As used in this article:

(i) "Bonds" means notes, warrants, bonds, temporary bonds and anticipation notes issued by the authority pursuant to this article.

37-5-403. Authority revenue bonds; issuance; amount.

(a) In order to finance projects not owned by the authority, the authority may issue and have outstanding bonds to finance electric transmission facilities and related infrastructure, which shall be located at least partially within Wyoming, in an amount not to exceed one

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billion dollars (\$1,000,000,000.00). The authority shall have contracts sufficient to justify the issuance of bonds.

(b) The principal amount of any bonds which have been retired, redeemed, defeased or refunded by the authority need not be taken into account in computing compliance with the maximum amounts of bonds authorized to be issued under subsection (a) of this section.

(c) Subject to subsection (a) of this section, the authority may issue bonds in principal amounts the authority determines necessary to provide sufficient funds for achieving its purposes under this article, including the reduction of principal, the payment of interest, the establishment of reserves, the costs of administration and for the purpose of defraying all other associated costs. All bonds issued under this article are negotiable instruments under the laws of the state unless expressly provided to the contrary on the face of the bonds. The authority may enter into contracts to insure the payment of principal and interest, for interest rate exchange contracts and for financial guarantees to lower the cost of its borrowing.

(d) All bonds issued by the authority are payable solely out of special funds consisting of all or part of its revenues, receipts, monies and assets, as designated in the proceedings under which the bonds are authorized. The bonds shall bear interest at the rates, be executed and delivered at times and in denominations, be of terms and maturities, be in registered form as to principal and interest or principal alone, and bear manual or facsimile signatures and seals as determined by the authority. Bonds issued by the authority are not general obligations of this state nor of any political subdivision of this state. The bonds shall be solely the obligation of the authority and

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shall recite on their face that they do not constitute obligations of the state or any political subdivision of the state.

(e) Bonds may be payable in installments and may bear maturities not exceeding forty (40) years from the date issued as determined by the authority.

(f) As determined by the authority, bonds and interest may be payable at a time or place whether within or without the state. Bonds may contain other provisions not inconsistent with this article.

(g) Any bonds issued by the authority may contain an option to redeem all or any part as may be specified. The price of redemption, the terms and conditions and the procedure of notice shall be set forth in the proceedings of the authority and may appear on the face of the bonds.

(h) Any bonds of the authority may be sold at, above or below par value, at public or private sale, in a manner and from time to time as determined by the authority. The authority may pay professional fees, insurance, expenses, premiums and commissions which it finds necessary or advantageous to this state in connection with the issuance and sale.

(j) The authority may provide for the issuance of its bonds to refund any bonds of the authority then outstanding, including the payment of any redemption premium and any interest or premium accrued or to accrue to, the earliest or subsequent date of redemption, purchase or maturity of the bonds. Refunding shall be accomplished in the manner prescribed by W.S. 16-5-101 through 16-5-119 to the extent it is not inconsistent with this article.

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37-5-404. Authority revenue bonds; security; payments after retirement.

(a) The principal and interest on any bonds issued by the authority shall be secured by a pledge of revenues from the operation of the project financed, by a first mortgage on the facilities, by guarantees and pledges of the entity owning the project or of the parent corporation owning said entity or by any combination thereof or other security as may be determined by the authority to be reasonable and prudent. The guarantees and pledges shall be no less favorable to the authority than those granted other lenders of the same class.

(b) The authority may require additional payments, as negotiated, to bondholders to be made either in a lump sum at the time of retirement of the bonds or annually from the time of retirement of the bonds until project use is terminated or may require additional incentives from the owner of the project to prospective bondholders so long as the incentives are not contrary to the Wyoming constitution.

(c) The authority may require such other security for repayment of the bonds as it deems necessary.

(d) Each pledge, agreement, mortgage or other instrument made for the benefit or security of any bonds of the authority is valid and binding from the time when made. The revenues, receipts, monies and assets pledged are immediately subject to the lien of the pledge without delivery or further act. The lien is valid and binding against persons having claims of any kind against the authority whether or not the persons have actual notice of the lien. Neither the resolution nor the indenture or

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other instrument by which a pledge is created need be recorded or filed.

37-5-405. Exemptions from taxation.

The exercise of the powers granted by this article constitutes the performance of an essential governmental function. Any bonds issued under this article and the income therefrom, shall be free from taxation of every kind by the state, municipalities and political subdivisions of the state.

37-5-406. Bonds as legal investments.

The bonds of the authority are legal investments which may be used as collateral for public funds of the state, insurance companies, banks, savings and loan associations, investment companies, trustees and other fiduciaries which may properly and legally invest funds in their control or belonging to them in bonds of the authority. With the written approval of the state loan and investment board and the attorney general, the state treasurer may invest monies from the permanent Wyoming mineral trust fund in bonds of the authority in an amount specified by the state loan and investment board and the attorney general but not to exceed the amount specified in W.S. 37-5-403(a), and the interest payable on the bonds shall be at least four percent (4%) and revenue under W.S. 37-5-404(b) shall be credited as received to the state general fund. The limitation on legislatively designated investments under W.S. 9-4-712 shall not apply to investments made under this section.

37-5-407. State pledge not to impair bondholder's rights and remedies.

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The state pledges to the holders 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 agreements made with the holders, or in any way impair the rights and remedies of the holders until the bonds together with the interest, 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 is authorized to include this pledge of the state in any agreement with the holders of the bonds.

37-5-408. Powers; duties; limitations.

(a) The authority has the powers granted by W.S. 37-5-301 through 37-5-307 as necessary to carry out the purposes of this article including the power to hire technical consultants, financial advisors and legal advisors and specifically including the powers granted by W.S. 37-5-304(a)(ii). In addition to the powers otherwise granted to the authority, the authority shall have the power to:

(i) Enter into loan or other agreements with respect to one (1) or more projects upon the terms and conditions the authority considers advisable;

(ii) Make and execute agreements, contracts and other instruments necessary or convenient in the exercise of its powers and functions, including contracts, with any individual, firm, corporation, governmental agency or other entity.

(b) The authority may assess and collect fees that are nonrefundable from applicants seeking to obtain authority financing of a project.

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(c) The authority shall maintain such records and accounts of revenues and expenditures as required by the director of the state department of audit. The director or his designee shall conduct an annual financial and legal compliance audit of the accounts of the authority and file copies thereof with the governor and the legislature.

(d) The authority is subject to the requirements of:

(i) W.S. 16-3-101 through 16-3-105;

(ii) W.S. 16-4-201 through 16-4-205; and

(iii) W.S. 16-4-401 through 16-4-407.

(e) The authority shall require that any project owner receiving a loan under this article shall maintain records and accounts relating to receipt and disbursements of loan proceeds, transportation costs and information on energy sales and deliveries and make the records available to the state auditor for inspection.

Section 2. W.S. 9-4-831(a)(xi) is amended to read:

9-4-831. Investment of public funds.

(a) The state treasurer, or treasurer of any political subdivision, municipality or special district of this state, and the various boards of trustees and boards of directors of county hospitals, airports, fairs and other duly constituted county boards and commissions, may invest in:

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(xi) As authorized by W.S. 37-5-206 and 37-5-406, bonds of the Wyoming natural gas pipeline authority and the Wyoming infrastructure authority;

Section 3. The authority shall report to the joint minerals, business and economic development interim committee and the joint appropriations interim committee by October 1, 2004 about progress under this act. The infrastructure authority created by this act shall at times it determines appropriate, report to the legislature regarding additional authority or increased debt limitations necessary or convenient to fulfill the purposes of this act. The report shall include any recommendations for legislation and, if necessary, elections, to authorize the additional authority or debt limitations.

Section 4. Two hundred fifty thousand dollars (\$250,000.00) is appropriated from the general fund to be loaned by the state treasurer to the Wyoming infrastructure authority to pursue the construction of infrastructure authorized by this act and beneficial to the state of Wyoming. Monies loaned to the authority shall be repaid, with interest at an annual rate set by the state loan and investment board of not more than four percent (4%), to the general fund not later than June 30, 2009 from the proceeds of bonds issued by the authority. A loan agreement shall be prepared and approved by the attorney general before execution thereof and distribution of the loan proceeds.

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Section 5. This act is effective July 1, 2004.

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the Senate.

Chief Clerk