

SENATE FILE NO. SF0100

Economic diversification-broadband services.

Sponsored by: Management Council

A BILL

for

1 AN ACT relating to economic diversification; creating a
 2 broadband development program; specifying requirements for
 3 providing funds for projects under the program; providing
 4 for administration by the Wyoming business council;
 5 requiring rules and specifying procedures; providing for
 6 the establishment of a broadband advisory council;
 7 providing for the position of broadband coordinator;
 8 providing appropriations; restricting appropriations as
 9 specified; and providing for an effective date.

10

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

12

13 **Section 1.** W.S. 9-12-1501 through 9-12-1509 are
 14 created to read:

15

1 **9-12-1501. Broadband development program established;**
2 **purposes; eligibility; definitions.**

3

4 (a) A broadband funding program is established under
5 the Wyoming business council to provide funds to eligible
6 applicants in order to promote the expansion of access to
7 broadband service in unserved areas of the state.

8

9 (b) Funds may be provided under this article for the
10 acquisition, deployment and installation of infrastructure
11 that supports broadband service at a minimum of at least
12 twenty-five (25) megabits per second download and three (3)
13 megabits per second upload in residential areas and one (1)
14 gigabits per second download speed and one hundred (100)
15 megabits per second upload speed in business corridors.

16

17 (c) Except as provided in subsection (d) of this
18 section, eligible applicants for funding awarded under this
19 article are public private partnerships which include:

20

21 (i) A business entity authorized to be formed
22 under title 17 of the Wyoming statutes, or the laws of
23 another state that are the functional equivalent, which is

1 authorized to transact business in this state and has
2 experience installing broadband infrastructure and
3 providing broadband services in rural areas; and
4

5 (ii) A government entity specified in the
6 following:
7

8 (A) A city, town or county or joint powers
9 board; or
10

11 (B) A tribal government of either the
12 Northern Arapaho or Eastern Shoshone tribes of the Wind
13 River Indian Reservation.
14

15 (d) A governmental entity specified in subparagraph
16 (c)(ii)(A) or (B) of this section shall develop a request
17 for proposals, as prescribed by the council, on such a form
18 as may be promulgated by the council, inviting business
19 entities to participate in a project proposed for funding
20 under this article. If no eligible business entity
21 responds to the request for proposal with a proposal
22 meeting the requirements specified, the governmental entity
23 may apply individually, or jointly with any other

1 governmental entity specified in subsection (c) of this
2 section.

3

4 (e) As used in this article, until established
5 otherwise by rule of the Wyoming business council pursuant
6 to subsection (f) of this section, "unserved area" is an
7 area in which there exists no fixed terrestrial broadband
8 service, or in which the maximum fixed terrestrial
9 broadband speed available:

10

11 (i) To residential customers is ten (10)
12 megabits per second download and one (1) megabit per second
13 upload;

14

15 (ii) To a business corridor within a
16 municipality:

17

18 (A) With a population of less than two
19 thousand (2,000), is twenty-five (25) megabits per second
20 download and three (3) megabits per second upload;

21

1 (B) With a population of two thousand
2 (2,000) or more, is fifty (50) megabits per second download
3 and five (5) megabits per second upload.

4

5 (iii) To a business corridor in an
6 unincorporated area of a county, is twenty-five (25)
7 megabits per second download and three (3) megabits per
8 second upload.

9

10 (f) The Wyoming business council shall, by rule
11 effective on July 1, 2020, modify the definition of
12 "unserved area" for purposes of this article. The rule
13 shall only modify the definition by providing for upload
14 and download speeds exceeding those specified in subsection
15 (e) of this section as the business council determines
16 appropriate for technological conditions prevailing as of
17 July 1, 2020.

18

19 (g) The Wyoming business council shall by rule
20 establish a definition of "business corridor" for purposes
21 of this article. An area shall not be considered a
22 business corridor unless multiple businesses are, or have
23 undertaken permitting, construction or other substantial

1 steps to be, located in proximity to each other such that
2 the provision of broadband services at the speeds specified
3 in subsections (e) and (f) of this section is
4 technologically and economically feasible.

5

6 **9-12-1502. Application process.**

7

8 (a) An eligible applicant shall submit an application
9 to the council on a form prescribed by the council. The
10 council shall develop administrative procedures governing
11 the application and funding process by September 1, 2018.
12 The council shall be responsible for receiving and
13 reviewing applications, entering into contracts and
14 authorizing the distribution of funds under this article,
15 subject to approval by the governor or his designee.

16

17 (b) The council shall provide for funding periods not
18 less frequently than biannually. At least thirty (30) days
19 prior to the first day of the funding period for which
20 applications may be submitted, the council shall publish on
21 its official website the specific criteria and any
22 quantitative weighting scheme or scoring system the council
23 will use to evaluate or rank applications.

1

2 (c) Funding under this article to a public private
3 partnership shall not require of the partnering business
4 entity:

5

6 (i) An open access network;

7

8 (ii) Rates, terms and conditions that differ
9 from those the provider offers in its other service areas;

10

11 (iii) Rate regulation; or

12

13 (iv) Time constraints to build which are not
14 technologically feasible.

15

16 **9-12-1503. Application contents.**

17

18 (a) An applicant for funding under this article shall
19 provide the following information on the application:

20

21 (i) The location of the project;

22

1 (ii) The kind and amount of broadband
2 infrastructure to be deployed for the project, including
3 initial speeds to be achieved and initial price of the
4 service to be provided;

5

6 (iii) Evidence regarding the unserved nature of
7 the area where the project is to be located;

8

9 (iv) The number of households and businesses
10 passed that will have access to broadband service as a
11 result of the project, or whose broadband service will be
12 upgraded as a result of the project;

13

14 (v) Significant community institutions and
15 industries that will benefit from the project;

16

17 (vi) Evidence of community support for the
18 project;

19

20 (vii) The total cost of the project, including a
21 business plan;

22

1 (viii) Sources of funding or in-kind
2 contributions for the project that will supplement any
3 funding under this article, including an examination of any
4 federal grants available to the project;

5
6 (ix) Evidence that no later than six (6) weeks
7 before submission of the application the applicant
8 contacted, in writing, all entities providing broadband
9 service in the proposed project area to ask for each
10 broadband service provider's plan to upgrade broadband
11 service in the project area to speeds that meet or exceed
12 the speeds proposed in the application, within the time
13 frame specified in the proposed project activities;

14
15 (x) The broadband service providers' written
16 responses, if any, to the inquiry made under paragraph (ix)
17 of this subsection;

18
19 (xi) Acknowledgement by the governing body, and
20 any partnering business entity by a person with legal
21 authority to bind the business entity, that funding may
22 only be provided in accordance with a contract executed in

1 conformance with this article and is subject to
2 availability and approval of distribution of funds;

3

4 (xii) If the application is not submitted
5 jointly with a business entity, an account of the request
6 for proposals issued by the governmental entity applying
7 and responses to the request, if any;

8

9 (xiii) Additional information requested by the
10 council.

11

12 **9-12-1504. Challenge process.**

13

14 (a) Within three (3) business days of the close of
15 the funding application process, the council shall publish
16 on its official website the proposed geographic broadband
17 service area and the proposed broadband service speeds for
18 each application submitted. An existing broadband service
19 provider may, within thirty (30) days of publication of the
20 information, submit in writing to the council a challenge
21 to an application. A challenge shall contain information
22 demonstrating that:

23

1 (i) The provider currently provides or has begun
2 construction or undertaken permitting or other significant
3 steps toward construction to provide broadband service
4 comparable to that in the proposed project at speeds equal
5 to or greater than the speeds proposed in the application
6 and with other capabilities and project size comparable to
7 the project proposed in the application; or

8
9 (ii) The provider commits to complete
10 construction of broadband infrastructure and provide
11 broadband service comparable to that in the proposed
12 project at speeds equal to or greater than the speeds
13 proposed in the application and with other capabilities and
14 project size comparable to the project proposed in the
15 application no later than eighteen (18) months after the
16 funding determinations are to be made under this section
17 for the application submitted.

18
19 (b) The council shall evaluate the information
20 submitted in a provider's challenge under this section, and
21 is prohibited from funding a project if the council
22 determines the provider is currently providing broadband
23 service or the provider's commitment to provide broadband

1 service that meets the requirements of subsection (a) of
2 this section in the proposed project area is credible.

3

4 (c) If the council denies funding to an applicant as
5 a result of a broadband service provider's challenge made
6 under this section, and the broadband service provider does
7 not fulfill the provider's commitment to provide broadband
8 service in the project area, the council is prohibited from
9 denying funding to an applicant as a result of a challenge
10 by the same broadband service provider for the following
11 two (2) fiscal years, unless the council determines that
12 the broadband service provider's failure to fulfill the
13 provider's commitment was the result of factors beyond the
14 broadband service provider's control.

15

16 **9-12-1505. Funding determinations.**

17

18 (a) In evaluating applications and providing funding
19 under this article, the council shall give highest priority
20 to applications which the council determines are public
21 private partnerships.

22

1 (b) In evaluating applications and entering into
2 agreements to provide funding, the council shall give
3 priority to applications that meet one (1) or more of the
4 following criteria, with additional priority given for
5 meeting multiple criteria:

6

7 (i) Offer new or substantially upgraded
8 broadband service to important community institutions and
9 businesses;

10

11 (ii) Serve economically distressed areas of the
12 state, as measured by indices of unemployment, poverty or
13 population loss that are significantly greater than the
14 statewide average;

15

16 (iii) Include a component to actively promote
17 the adoption of the newly available broadband services in
18 the community;

19

20 (iv) Provide evidence of strong support for the
21 project from citizens, government, businesses and
22 institutions in the community;

23

1 (v) Provide access to broadband service to a
2 greater number of unserved households and businesses;

3
4 (vi) Provide comparability to service offered in
5 urban areas, both in speed and pricing as determined by the
6 Federal Communications Commission;

7
8 (vii) Provide access to very high speed
9 broadband service to business districts or other business
10 areas and are likely to secure economic benefits for the
11 surrounding locality; or

12
13 (viii) Leverage greater amounts of funding for
14 the project from other private and public sources.

15
16 (c) The council shall endeavor to award grants under
17 this section to qualified applicants in geographically
18 diverse regions of the state.

19
20 **9-2-1506. Limitations.**

21
22 (a) No agreement under this article may fund more
23 than fifty percent (50%) of the total cost of a project. At

1 least ten percent (10%) of the project cost shall be
2 matched in total by the governmental entity or governmental
3 entities submitting the application. The council may reduce
4 the minimum local governmental match based upon the merits
5 of the project. Grant funds from other state or federal
6 grant programs may be used to meet the fifty percent (50%)
7 minimum matching requirement under this article, but shall
8 not be used to provide the minimum match required of
9 governmental entities under this subsection unless the
10 council determines the governmental entity is unable to
11 otherwise provide the match.

12

13 (b) No single project shall exceed five million
14 dollars (\$5,000,000.00) in funding provided under this
15 article.

16

17 **9-2-1507. Application evaluation report.**

18

19 (a) By June 30 of each year, following adoption of
20 the state broadband enhancement plan, the council shall
21 publish on its website and provide to the joint minerals,
22 business and economic development interim committee a list

1 of all applications for funding under this article received
2 during the previous year and, for each application:

3

4 (i) The results of any quantitative weighting
5 scheme or scoring system the council used to fund the
6 applications;

7

8 (ii) The amount of funding requested; and

9

10 (iii) The funding provided under this article,
11 if any.

12

13 (b) Within ninety (90) days after a project's
14 proposed completion date, the council shall review the
15 project and provide in the report under subsection (a) of
16 this section, its determination of whether the project was
17 completed and services rendered in accordance with the
18 agreement under this article. If the council reports that
19 a project was not completed or services are not being
20 rendered in accordance with an agreement, it shall report
21 actions it has taken to enforce the agreement.

22

23 **9-12-1508. Minimum broadband speeds; rulemaking.**

1

2 The council shall establish by rule minimum business and
3 residential upload and download speeds which broadband
4 projects must meet upon completion of construction to
5 qualify for funding under this article. In establishing
6 minimum speeds the council shall consider speeds
7 established by the federal communications commission as
8 minimums necessary to be considered "advanced
9 telecommunications capability" and speeds needed to attract
10 businesses to Wyoming communities. Speeds adopted by the
11 council shall meet or exceed a download speed of
12 twenty-five (25) megabits per second and an upload speed of
13 three (3) megabits per second. For projects primarily
14 serving business entities the minimum speed adopted by the
15 council shall be one (1) gigabits per second download speed
16 and one hundred (100) megabits per second upload speed,
17 commencing January 1, 2022.

18

19 **9-12-1509. Advisory council; broadband coordinator.**

20

21 (a) The business council shall, in consultation with
22 the economically needed diversity options for Wyoming
23 (ENDOW) executive council, establish a broadband advisory

1 council consisting of eleven (11) members. One (1) member
2 shall be the state chief information officer or his
3 designee. Remaining members shall be appointed by the
4 council from the public at-large, with geographic diversity
5 and to include diverse interests, including backgrounds in
6 economic development, state or local government entities,
7 broadband providers, technology related businesses, health
8 care, education, library services and public safety. At
9 least one (1) representative of the Northern Arapaho or
10 Eastern Shoshone tribes of the Wind River Indian
11 Reservation shall be appointed to the advisory council.
12 One (1) senator appointed by the president of the senate
13 and one (1) representative appointed by the speaker of the
14 house shall serve as legislative liaisons to the advisory
15 council. Legislative liaisons shall be paid salary, per
16 diem and mileage as provided in W.S. 28-5-101 when
17 attending meetings of the advisory council. Members of the
18 advisory council shall receive no salary, but shall be
19 reimbursed under W.S. 9-3-102 and 9-3-103 for per diem and
20 travel expenses incurred in the performance of their
21 duties.

22

1 (b) The advisory council shall provide advice and
2 make recommendations to the council on the following
3 subjects:

4

5 (i) The development of an inventory and map of
6 current broadband availability, as provided by voluntary
7 submission from broadband providers and derived from other
8 resources, including Federal Communications Commission
9 reports, and identification of areas of the state unserved
10 by broadband technology;

11

12 (ii) Needs, practices and technologies for
13 providing broadband services in the most efficient manner
14 possible, to accommodate economic growth, diversification
15 and development, and enhance education opportunities;

16

17 (iii) Coordination with the ENDOW executive
18 council, the state chief information officer and local and
19 tribal governmental entities to ensure that state and local
20 policies are conducive to development of broadband
21 services;

22

1 (iv) Applications received under this article,
2 as requested by the council;

3

4 (v) Propose to the council:

5

6 (A) A state broadband enhancement plan, for
7 adoption by the council not later than September 1, 2018;

8

9 (B) Not later than March 1, 2020, propose
10 recommended changes to upload and download speeds specified
11 in the definition of unserved areas, including unserved
12 residential and business corridors.

13

14 (c) The business council shall, in consultation with
15 the ENDOW executive council and the governor's office,
16 designate an employee of the business council as
17 coordinator of broadband services. The person designated
18 shall have expertise in telecommunications and specifically
19 in the provision of broadband services. As directed by the
20 business council, the coordinator shall staff the broadband
21 advisory council. The coordinator shall, with approval of
22 the council, accomplish the tasks set forth in paragraphs
23 (b) (i) through (v) of this section and undertake other

1 duties as assigned by the council in consultation with the
2 governor's office. The council may contract with a
3 consultant to provide services to the broadband advisory
4 council and to the business council under this act.

5
6 **Section 2.** W.S. 9-2-2906(b)(xii), 9-12-102(a)(viii),
7 9-12-103(f), 9-12-105(a)(vii) and by creating a new
8 paragraph (ix) and 9-12-1404 are amended to read:

9
10 **9-2-2906. Office of the state chief information**
11 **officer and director; authority; duties of department.**

12
13 (b) The department shall carry out the following
14 coordination and management functions:

15
16 (xii) Enhance statewide broadband adoption and
17 coordination among all governmental users ~~and where~~
18 ~~possible among the citizens of the state~~ in coordination
19 with the Wyoming business council and its broadband
20 advisory council;

21
22 **9-12-102. Definitions.**

23

1 (a) As used in this act, the following terms have the
2 following meanings, except where the context clearly
3 indicates otherwise:
4

5 (viii) "This act" means W.S. 9-12-101 through
6 ~~9-12-1312~~ 9-12-1509.

7
8 **9-12-103. Wyoming business council; creation;**
9 **composition; compensation; termination; meetings; surety**
10 **bonds; fiscal control.**

11
12 (f) The council may also form committees and advisory
13 councils, which may include representatives who are not
14 members of the board, to undertake more extensive study and
15 discussion of the issues before the board. The council
16 shall form an advisory council for broadband development
17 and designate a broadband coordinator in accordance with
18 W.S. 9-12-1509.

19
20 **9-12-105. Economic development services.**

21
22 (a) It shall be the duty of the council to encourage,
23 stimulate and support the development and expansion of the

1 economy of the state. The council is charged with the
2 following duties and responsibilities:

3
4 (vii) To encourage the export of products and
5 services from the state to national and international
6 markets; ~~and~~

7
8 (ix) To adopt a state broadband enhancement
9 plan.

10
11 **9-12-1404. Economic diversification account created;**
12 **authorized expenditures.**

13
14 (a) There is created an economic diversification
15 account. All monies in the account are continuously
16 appropriated to the office of the governor to be used
17 ~~solely~~ for the purposes of this article and as otherwise
18 specified by law, including per diem, mileage and other
19 administrative expenses of the ENDOW executive council.
20 Notwithstanding W.S. 9-2-1008 and 9-4-207, funds in the
21 account shall not lapse at the end of the fiscal period.
22 Interest earned on funds in the account shall be deposited
23 to the account or appropriate subaccount. Within the

1 account shall be subaccounts. For accounting and investment
2 purposes only all subaccounts shall be treated as separate
3 accounts. The subaccounts are as follows:

4
5 (i) The broadband development subaccount. Funds
6 within this subaccount may be expended as requested by the
7 Wyoming business council and approved by the governor or
8 his designee to provide funding for agreements entered into
9 pursuant to W.S. 9-12-1501 through 9-12-1508.

10
11 (b) The governor may accept, and shall deposit to the
12 account, or to the appropriate subaccount within the
13 account, any gifts, contributions, donations, grants or
14 federal funds specifically designated for purposes of this
15 article or other ENDOW related program.

16
17 **Section 3.**

18
19 (a) There is appropriated from the legislative
20 stabilization reserve account:

21

1 (i) Three hundred fifty thousand dollars
2 (\$350,000.00) to the Wyoming business council, for purposes
3 of W.S. 9-12-1509;

4
5 (ii) Ten million dollars (\$10,000,000.00) to the
6 broadband development subaccount Wyoming created by W.S.
7 9-12-1404(a)(i). No funds from this appropriation shall be
8 expended, obligated or encumbered until adoption of the
9 broadband enhancement plan under W.S. 9-12-105(a)(ix).
10 Notwithstanding any other provision of law, funds
11 appropriated under this section shall not be transferred or
12 expended for any purpose other than as provided in W.S.
13 9-12-1404(a)(i). Notwithstanding W.S. 9-2-1008 and 9-4-207,
14 funds in the broadband development subaccount shall not
15 lapse at the end of the fiscal period.

16
17 (b) Upon the effective date of this section:

18
19 (i) The appropriation contained in 2018 House
20 Bill 0001, section 321(a)(ii) to the economic
21 diversification account created by W.S. 9-12-1404(a) shall
22 be reduced two million dollars (\$2,000,000.00);

23

1 (ii) 2018 House Bill 0001, section 321(a)(ii)(B)
2 shall not be effective;

3

4 (iii) The appropriation contained in 2018 House
5 Bill 0001, section 321(a)(iii) to the economic
6 diversification account created by W.S. 9-12-1404(a) shall
7 be reduced eight million three hundred fifty thousand
8 dollars (\$8,350,000.00).

9

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

14

15

(END)