

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

16 **9-12-1501. Broadband development program established.**

1

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

7

8 (b) Funds may be provided under this section for the
9 acquisition and installation of infrastructure that
10 supports broadband service at a minimum of at least
11 twenty-five (25) megabits per second download and three (3)
12 megabits per second upload.

13

14 (c) Eligible applicants for funding awarded under
15 this section include:

16

17 (i) A city, town or county or joint powers
18 board;

19

20 (ii) A tribal government of either the Northern
21 Arapaho or Eastern Shoshone tribes of the Wind River Indian
22 Reservation;

1

2 (iii) Business entities authorized to be formed
3 under title 17 of the Wyoming statutes, or the laws of
4 another state that are the functional equivalent, and
5 authorized to transact business in this state, if the
6 business entity applies as part of an application submitted
7 with an entity specified in paragraph (i) or (ii) of this
8 subsection.

9

10 (d) A governmental entity specified in paragraph
11 (c)(i) or (ii) of this section shall develop a request for
12 proposals inviting business entities to participate in a
13 project proposed for funding under this act. If no
14 eligible business entity responds to the request for
15 proposal with a proposal meeting the requirements specified
16 the governmental entity may apply individually, or jointly
17 with any other governmental entity specified in subsection
18 (c) of this section.

19

20 **9-12-1502. Application process.**

21

1 (a) An eligible applicant shall submit an application
2 to the council on a form prescribed by the council. The
3 council shall develop administrative procedures governing
4 the application and funding process by September 1, 2018.
5 The council shall be responsible for receiving and
6 reviewing applications, entering into contracts and
7 authorizing the distribution of funds under this section,
8 subject to approval by the governor or his designee.

9

10 (b) The council shall provide for funding periods not
11 less frequently than biannually. At least thirty (30) days
12 prior to the first day of the funding period for which
13 applications may be submitted, the council shall publish on
14 its official website the specific criteria and any
15 quantitative weighting scheme or scoring system the council
16 will use to evaluate or rank applications.

17

18 **9-12-1503. Application contents.**

19

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

22

1 (i) The location of the project;

2

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

7

8 (iii) Evidence regarding the unserved or
9 underserved nature of the community in which the project is
10 to be located;

11

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

16

17 (v) Significant community institutions and
18 industries that will benefit from the project;

19

20 (vi) Evidence of community support for the
21 project;

1

2 (vii) The total cost of the project, including a
3 business plan;

4

5 (viii) Sources of funding or in-kind
6 contributions for the project that will supplement any
7 funding under this article, including an examination of any
8 federal grants available to the project;

9

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

18

19 (x) The broadband service providers' written
20 responses to the inquiry made under paragraph (ix) of this
21 subsection;

1

2 (xi) Acknowledgement by the governing body, and
3 if a business entity is a participant in the application by
4 a person with legal authority to bind the business entity,
5 that funding may only be provided in accordance with a
6 contract executed in conformance with this article and is
7 subject to availability and approval of distribution of
8 funds;

9

10 (xii) If the application is not submitted
11 jointly with a business entity, an account of the request
12 for proposals issued by the governmental entity applying
13 and responses to the request;

14

15 (xiii) Additional information requested by the
16 council.

17

18 **9-12-1504. Challenge process.**

19

20 (a) Within three (3) days of the close of the funding
21 application process, the council shall publish on its
22 official website the proposed geographic broadband service

1 area and the proposed broadband service speeds for each
2 application submitted. An existing broadband service
3 provider in or proximate to the proposed project area may,
4 within thirty (30) days of publication of the information,
5 submit in writing to the council a challenge to an
6 application. A challenge shall contain information
7 demonstrating that:

8

9 (i) The provider currently provides or has begun
10 construction or undertaken permitting or other significant
11 steps toward construction to provide broadband service
12 comparable to that in the proposed project at speeds equal
13 to or greater than the speeds proposed in the application
14 and with other capabilities and project size comparable to
15 the project proposed in the application; or

16

17 (ii) The provider commits to complete
18 construction of broadband infrastructure and provide
19 broadband service comparable to that in the proposed
20 project at speeds equal to or greater than the speeds
21 proposed in the application and with other capabilities and
22 project size comparable to the project proposed in the

1 application no later than eighteen (18) months after the
2 funding determinations are to be made under this section
3 for the application submitted.

4

5 (b) The council shall evaluate the information
6 submitted in a provider's challenge under this section, and
7 is prohibited from funding a project if the council
8 determines the provider's commitment to provide broadband
9 service that meets the requirements of subsection (a) of
10 this section in the proposed project area is credible.

11

12 (c) If the council denies funding to an applicant as
13 a result of a broadband service provider's challenge made
14 under this section, and the broadband service provider does
15 not fulfill the provider's commitment to provide broadband
16 service in the project area, the council is prohibited from
17 denying funding to an applicant as a result of a challenge
18 by the same broadband service provider for the following
19 two (2) fiscal years, unless the council determines that
20 the broadband service provider's failure to fulfill the
21 provider's commitment was the result of factors beyond the
22 broadband service provider's control.

1

2 **9-12-1505. Funding determinations.**

3

4 (a) In evaluating applications and providing funding
5 under this article, the council shall give highest priority
6 to applications which the council determines are unserved
7 or underserved, as defined by the council through
8 consultation with the broadband advisory council.

9

10 (b) In evaluating applications and entering into
11 agreements to provide funding, the council shall give
12 priority to applications that meet one (1) or more of the
13 following criteria, with additional priority given for
14 meeting multiple criteria:

15

16 (i) Offer new or substantially upgraded
17 broadband service to important community institutions
18 including, but not limited to, libraries, educational
19 institutions, public safety facilities and health care
20 facilities;

21

1 (ii) Serve economically distressed areas of the
2 state, as measured by indices of unemployment, poverty or
3 population loss that are significantly greater than the
4 statewide average, or provide technical support and train
5 residents, businesses and institutions in the community
6 served by the project to utilize broadband service;

7

8 (iii) Include a component to actively promote
9 the adoption of the newly available broadband services in
10 the community;

11

12 (iv) Provide evidence of strong support for the
13 project from citizens, government, businesses and
14 institutions in the community;

15

16 (v) Provide access to broadband service to a
17 greater number of unserved or underserved households and
18 businesses;

19

20 (vi) Provide comparability to service offered in
21 urban areas, both in speed and pricing;

1

2 (vii) Utilizes public/private partnerships;

3

4 (viii) Provide access to very high speed
5 broadband service to business districts or other business
6 areas and are likely to secure economic benefits for the
7 surrounding locality; or

8

9 (ix) Leverage greater amounts of funding for the
10 project from other private and public sources.

11

12 (c) The council shall endeavor to award grants under
13 this section to qualified applicants in all regions of the
14 state.

15

16 **9-2-1506. Limitations.**

17

18 (a) No agreement under this article may fund more
19 than fifty percent (50%) of the total cost of a project.
20 For applications submitted jointly by one (1) or more
21 governmental entity or entities and a business entity, at
22 least ten percent (10%) of the project cost shall be

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

11

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

15

16 **9-2-1507. Application evaluation report.**

17

18 (a) By June 30 of each year, the council shall
19 publish on its website and provide to the joint minerals,
20 business and economic development interim committee a list
21 of all applications for funding under this article received
22 during the previous year and, for each application:

1

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

5

6 (ii) The amount of funding requested; and

7

8 (iii) The funding provided under this article,
9 if any.

10

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

20

21 **9-12-1508. Minimum broadband speeds; rulemaking.**

22

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

17

18 **9-12-1509. Advisory council; broadband coordinator.**

19

20 (a) The business council shall, in consultation with
21 the economically needed diversity options for Wyoming
22 (ENDOW) executive council, establish a broadband advisory
23 council consisting of eleven (11) members. One (1) member

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

21

22 (b) The advisory council shall:

23

1 (i) Inventory and maintain an inventory of
2 current broadband infrastructure, and identify areas of the
3 state underserved or unserved by broadband technology;

4
5 (ii) Solicit comments on and recommendations on
6 needs, practices and technologies for providing broadband
7 services in the most efficient manner possible, to
8 accommodate economic growth, diversification and
9 development, and enhance education opportunities;

10
11 (iii) Coordinate with the ENDOW executive
12 council, the state chief information officer and local and
13 tribal governmental entities to ensure that state and local
14 policies are conducive to development of broadband
15 services. This coordination shall include review of the
16 development and use of the state unified network under W.S.
17 9-2-2906 to ensure limitations on the use of the network do
18 not unduly restrict the most efficient use of the network;

19
20 (iv) Advise the business council on applications
21 received under this article as requested by the council;

22
23 (v) Propose to the council:

1

2 (A) Definitions of underserved and unserved
3 broadband areas;

4

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

7

8 (c) The business council shall, in consultation with
9 the ENDOW executive council and the governor's office,
10 designate an employee of the business council as
11 coordinator of broadband services. The person designated
12 shall have expertise in telecommunications and specifically
13 in the provision of broadband services. As directed by the
14 business council, the coordinator shall staff the broadband
15 advisory council. The coordinator shall undertake other
16 duties as assigned by the council in consultation with the
17 governor's office. The council may contract with a
18 consultant to provide services to the broadband advisory
19 council and to the business council under this act.

20

21 **Section 2.** W.S. 9-2-2906(b)(xii), 9-12-102(a)(viii),
22 9-12-103(f), 9-12-105(a)(vii) and by creating a new
23 paragraph (ix) and 9-12-1404 are amended to read:

1

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

4

5 (b) The department shall carry out the following
6 coordination and management functions:

7

8 (xii) Enhance statewide broadband adoption and
9 coordination among all governmental users ~~and where~~
10 ~~possible among the citizens of the state~~ in coordination
11 with the Wyoming business council and its broadband
12 advisory council;

13

14 **9-12-102. Definitions.**

15

16 (a) As used in this act, the following terms have the
17 following meanings, except where the context clearly
18 indicates otherwise:

19

20 (viii) "This act" means W.S. 9-12-101 through
21 ~~9-12-1312~~ 9-12-1509.

22

1 **9-12-103. Wyoming business council; creation;**
2 **composition; compensation; termination; meetings; surety**
3 **bonds; fiscal control.**

4
5 (f) The council may also form committees and advisory
6 councils, which may include representatives who are not
7 members of the board, to undertake more extensive study and
8 discussion of the issues before the board. The council
9 shall form an advisory council for broadband development
10 and designate a broadband coordinator in accordance with
11 W.S. 9-12-1509.

12
13 **9-12-105. Economic development services.**

14
15 (a) It shall be the duty of the council to encourage,
16 stimulate and support the development and expansion of the
17 economy of the state. The council is charged with the
18 following duties and responsibilities:

19
20 (vii) To encourage the export of products and
21 services from the state to national and international
22 markets; ~~and~~

23

1 (ix) To adopt a state broadband enhancement
2 plan.

3
4 **9-12-1404. Economic diversification account created;**
5 **authorized expenditures.**

6
7 (a) There is created an economic diversification
8 account. All monies in the account are continuously
9 appropriated to the office of the governor to be used
10 ~~solely~~ for the purposes of this article and as otherwise
11 specified by law, including per diem, mileage and other
12 administrative expenses of the ENDOW executive council.
13 Notwithstanding W.S. 9-2-1008 and 9-4-207, funds in the
14 account shall not lapse at the end of the fiscal period.
15 Interest earned on funds in the account shall be deposited
16 to the account. Within the account shall be subaccounts.
17 For accounting and investment purposes only all subaccounts
18 shall be treated as separate account. The subaccounts are
19 as follows:

20
21 (i) The broadband development subaccount. Funds
22 within this subaccount may be expended as requested by the
23 Wyoming business council and approved by the governor or

1 his designee to provide funding for agreements entered into
2 pursuant to W.S. 9-12-1501 through 9-12-1508.

3
4 (b) The governor may accept, and shall deposit to the
5 account, or to the appropriate subaccount within the
6 account, any gifts, contributions, donations, grants or
7 federal funds specifically designated for purposes of this
8 article or other ENDOW related program.

9
10 **Section 3.**

11
12 (a) There is appropriated from revenues credited to
13 the strategic investments and projects account under W.S.
14 9-4-719(q) and (t) attributable to earnings from the fiscal
15 year beginning July 1, 2018 and ending June 30, 2019:

16
17 (i) Three hundred fifty thousand dollars
18 (\$350,000.00) to the Wyoming business council, for purposes
19 of W.S. 9-12-1509. The appropriations contained in 2018
20 House Bill 0001 to the economic diversification account
21 created by W.S. 9-12-1404 shall be reduced dollar for
22 dollar by the appropriation in this paragraph;

23

1 (ii) Ten million dollars (\$10,000,000.00) to the
2 broadband development subaccount Wyoming created by W.S.
3 9-12-1404(a)(i). No funds from this appropriation shall be
4 expended, obligated or encumbered until adoption of the
5 broadband enhancement plan under W.S. 9-12-105(a)(ix).
6 Notwithstanding any other provision of law, funds
7 appropriated under this section shall not be transferred or
8 expended for any purpose other than as provided in W.S.
9 9-12-1404(a)(i). Notwithstanding W.S. 9-2-1008 and 9-4-207,
10 funds in the broadband development subaccount shall not
11 lapse at the end of the fiscal period.

12

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

17

18

(END)