

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 areas of the state.

6

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

14

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

18

19 (i) A business entity authorized to be formed
20 under title 17 of the Wyoming statutes, or the laws of
21 another state that are the functional equivalent, which is
22 authorized to transact business in this state and has

1 experience installing broadband infrastructure and
2 providing broadband services in rural areas; and

3

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

6

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

9

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

13

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

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

3

4 **9-12-1502. Application process.**

5

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

14

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

22

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

4
5 (i) An open access network;

6
7 (ii) Rates, terms and conditions that differ
8 from those the provider offers in its other service areas;

9
10 (iii) Rate regulation; or

11
12 (iv) Time constraints to build which are not
13 technologically feasible.

14
15 **9-12-1503. Application contents.**

16
17 (a) An applicant for funding under this article shall
18 provide the following information on the application:

19
20 (i) The location of the project;

21

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;

1

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

6

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

15

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

19

20 (xi) Acknowledgement by the governing body, and
21 any partnering business entity by a person with legal
22 authority to bind the business entity, that funding may

1 only be provided in accordance with a contract executed in
2 conformance with this article and is subject to
3 availability and approval of distribution of funds;

4

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

9

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

12

13 **9-12-1504. Challenge process.**

14

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

1 to an application. A challenge shall contain information
2 demonstrating that:

3

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

11

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

21

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

8

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

20

21 **9-12-1505. Funding determinations.**

22

1 (a) In evaluating applications and providing funding
2 under this article, the council shall give highest priority
3 to applications which the council determines are public
4 private partnerships.

5

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

11

12 (i) Offer new or substantially upgraded
13 broadband service to important community institutions and
14 businesses;

15

16 (ii) Serve economically distressed areas of the
17 state, as measured by indices of unemployment, poverty or
18 population loss that are significantly greater than the
19 statewide average;

20

1 (iii) Include a component to actively promote
2 the adoption of the newly available broadband services in
3 the community;

4

5 (iv) Provide evidence of strong support for the
6 project from citizens, government, businesses and
7 institutions in the community;

8

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

11

12 (vi) Provide comparability to service offered in
13 urban areas, both in speed and pricing as determined by the
14 Federal Communications Commission;

15

16 (vii) Provide access to very high speed
17 broadband service to business districts or other business
18 areas and are likely to secure economic benefits for the
19 surrounding locality; or

20

1 (viii) Leverage greater amounts of funding for
2 the project from other private and public sources.

3

4 (c) The council shall endeavor to award grants under
5 this section to qualified applicants in geographically
6 diverse regions of the state.

7

8 **9-2-1506. Limitations.**

9

10 (a) No agreement under this article may fund more
11 than fifty percent (50%) of the total cost of a project. At
12 least ten percent (10%) of the project cost shall be
13 matched in total by the governmental entity or governmental
14 entities submitting the application. The council may reduce
15 the minimum local governmental match based upon the merits
16 of the project. Grant funds from other state or federal
17 grant programs may be used to meet the fifty percent (50%)
18 minimum matching requirement under this article, but shall
19 not be used to provide the minimum match required of
20 governmental entities under this subsection unless the
21 council determines the governmental entity is unable to
22 otherwise provide the match.

1

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

5

6 **9-2-1507. Application evaluation report.**

7

8 (a) By June 30 of each year, following adoption of
9 the state broadband enhancement plan, the council shall
10 publish on its website and provide to the joint minerals,
11 business and economic development interim committee a list
12 of all applications for funding under this article received
13 during the previous year and, for each application:

14

15 (i) The results of any quantitative weighting
16 scheme or scoring system the council used to fund the
17 applications;

18

19 (ii) The amount of funding requested; and

20

1 (iii) The funding provided under this article,
2 if any.

3
4 (b) Within ninety (90) days after a project's
5 proposed completion date, the council shall review the
6 project and provide in the report under subsection (a) of
7 this section, its determination of whether the project was
8 completed and services rendered in accordance with the
9 agreement under this article. If the council reports that
10 a project was not completed or services are not being
11 rendered in accordance with an agreement, it shall report
12 actions it has taken to enforce the agreement.

13

14 **9-12-1508. Minimum broadband speeds; rulemaking.**

15

16 The council shall establish by rule minimum business and
17 residential upload and download speeds which broadband
18 projects must meet upon completion of construction to
19 qualify for funding under this article. In establishing
20 minimum speeds the council shall consider speeds
21 established by the federal communications commission as
22 minimums necessary to be considered "advanced
23 telecommunications capability" and speeds needed to attract

1 businesses to Wyoming communities. Speeds adopted by the
2 council shall meet or exceed a download speed of
3 twenty-five (25) megabits per second and an upload speed of
4 three (3) megabits per second. For projects primarily
5 serving business entities the minimum speed adopted by the
6 council shall be one (1) gigabits per second download speed
7 and one hundred (100) megabits per second upload speed,
8 commencing January 1, 2022.

9

10 **9-12-1509. Advisory council; broadband coordinator.**

11

12 (a) The business council shall, in consultation with
13 the economically needed diversity options for Wyoming
14 (ENDOW) executive council, establish a broadband advisory
15 council consisting of eleven (11) members. One (1) member
16 shall be the state chief information officer or his
17 designee. Remaining members shall be appointed by the
18 council from the public at-large, with geographic diversity
19 and to include diverse interests, including backgrounds in
20 economic development, state or local government entities,
21 broadband providers, technology related businesses, health
22 care, education, library services and public safety. At
23 least one (1) representative of the Northern Arapaho or

1 Eastern Shoshone tribes of the Wind River Indian
2 Reservation shall be appointed to the advisory council.
3 One (1) senator appointed by the president of the senate
4 and one (1) representative appointed by the speaker of the
5 house shall serve as legislative liaisons to the advisory
6 council. Legislative liaisons shall be paid salary, per
7 diem and mileage as provided in W.S. 28-5-101 when
8 attending meetings of the advisory council. Members of the
9 advisory council shall receive no salary, but shall be
10 reimbursed under W.S. 9-3-102 and 9-3-103 for per diem and
11 travel expenses incurred in the performance of their
12 duties.

13

14 (b) The advisory council shall provide advice and
15 make recommendations to the council on the following
16 subjects:

17

18 (i) The development of an inventory and map of
19 current broadband availability, as provided by voluntary
20 submission from broadband providers and derived from other
21 resources, including Federal Communications Commission
22 reports, and identification of areas of the state unserved
23 by broadband technology;

1

2 (ii) Needs, practices and technologies for
3 providing broadband services in the most efficient manner
4 possible, to accommodate economic growth, diversification
5 and development, and enhance education opportunities;

6

7 (iii) Coordination with the ENDOW executive
8 council, the state chief information officer and local and
9 tribal governmental entities to ensure that state and local
10 policies are conducive to development of broadband
11 services;

12

13 (iv) Applications received under this article,
14 as requested by the council;

15

16 (v) Propose to the council:

17

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

20

21 (B) On July 1, 2020, propose recommended
22 changes to the definition of unserved areas, including
23 unserved residential and business corridors.

1

2 (c) The business council shall, in consultation with
3 the ENDOW executive council and the governor's office,
4 designate an employee of the business council as
5 coordinator of broadband services. The person designated
6 shall have expertise in telecommunications and specifically
7 in the provision of broadband services. As directed by the
8 business council, the coordinator shall staff the broadband
9 advisory council. The coordinator shall, with approval of
10 the council, accomplish the tasks set forth in paragraphs
11 (b)(i) through (v) of this section and undertake other
12 duties as assigned by the council in consultation with the
13 governor's office. The council may contract with a
14 consultant to provide services to the broadband advisory
15 council and to the business council under this act.

16

17 **Section 2.** W.S. 9-2-2906(b)(xii), 9-12-102(a)(viii),
18 9-12-103(f), 9-12-105(a)(vii) and by creating a new
19 paragraph (ix) and 9-12-1404 are amended to read:

20

21 **9-2-2906. Office of the state chief information**
22 **officer and director; authority; duties of department.**

23

1 (b) The department shall carry out the following
2 coordination and management functions:

3
4 (xii) Enhance statewide broadband adoption and
5 coordination among all governmental users ~~and where~~
6 ~~possible among the citizens of the state~~ in coordination
7 with the Wyoming business council and its broadband
8 advisory council;

9
10 **9-12-102. Definitions.**

11
12 (a) As used in this act, the following terms have the
13 following meanings, except where the context clearly
14 indicates otherwise:

15
16 (viii) "This act" means W.S. 9-12-101 through
17 ~~9-12-1312~~ 9-12-1509.

18
19 **9-12-103. Wyoming business council; creation;**
20 **composition; compensation; termination; meetings; surety**
21 **bonds; fiscal control.**

22

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

8
9 **9-12-105. Economic development services.**

10
11 (a) It shall be the duty of the council to encourage,
12 stimulate and support the development and expansion of the
13 economy of the state. The council is charged with the
14 following duties and responsibilities:

15
16 (vii) To encourage the export of products and
17 services from the state to national and international
18 markets; ~~and~~

19
20 (ix) To adopt a state broadband enhancement
21 plan.

22

1 **9-12-1404. Economic diversification account created;**
2 **authorized expenditures.**

3
4 (a) There is created an economic diversification
5 account. All monies in the account are continuously
6 appropriated to the office of the governor to be used
7 ~~solely~~ for the purposes of this article and as otherwise
8 specified by law, including per diem, mileage and other
9 administrative expenses of the ENDOW executive council.
10 Notwithstanding W.S. 9-2-1008 and 9-4-207, funds in the
11 account shall not lapse at the end of the fiscal period.
12 Interest earned on funds in the account shall be deposited
13 to the account. Within the account shall be subaccounts.
14 For accounting and investment purposes only all subaccounts
15 shall be treated as separate account. The subaccounts are
16 as follows:

17
18 (i) The broadband development subaccount. Funds
19 within this subaccount may be expended as requested by the
20 Wyoming business council and approved by the governor or
21 his designee to provide funding for agreements entered into
22 pursuant to W.S. 9-12-1501 through 9-12-1508.

23

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

6
7 **Section 3.**

8
9 (a) There is appropriated from revenues credited to
10 the strategic investments and projects account under W.S.
11 9-4-719(q) and (t) attributable to earnings from the fiscal
12 year beginning July 1, 2018 and ending June 30, 2019:

13
14 (i) Three hundred fifty thousand dollars
15 (\$350,000.00) to the Wyoming business council, for purposes
16 of W.S. 9-12-1509. The appropriations contained in 2018
17 House Bill 0001 to the economic diversification account
18 created by W.S. 9-12-1404 shall be reduced dollar for
19 dollar by the appropriation in this paragraph;

20
21 (ii) Ten million dollars (\$10,000,000.00) to the
22 broadband development subaccount Wyoming created by W.S.
23 9-12-1404(a)(i). No funds from this appropriation shall be

1 expended, obligated or encumbered until adoption of the
2 broadband enhancement plan under W.S. 9-12-105(a)(ix).
3 Notwithstanding any other provision of law, funds
4 appropriated under this section shall not be transferred or
5 expended for any purpose other than as provided in W.S.
6 9-12-1404(a)(i). Notwithstanding W.S. 9-2-1008 and 9-4-207,
7 funds in the broadband development subaccount shall not
8 lapse at the end of the fiscal period.

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)