

SENATE FILE NO. SF0076

Broadband development program-amendments.

Sponsored by: Senator(s) Dockstader and Representative(s)
Sommers

A BILL

for

1 AN ACT relating to the broadband development program;
2 creating requirements for providing funding for middle-mile
3 broadband projects; defining terms; amending minimum speed
4 requirements for projects funded under the program;
5 specifying eligible applicants for funding; amending
6 rulemaking authority and requirements for the program;
7 amending application contents; providing for the
8 confidentiality of certain application materials; amending
9 procedures for the challenge process; specifying additional
10 funding priorities; amending and repealing limitations on
11 funding projects; repealing rulemaking requirements for
12 broadband speeds; requiring rulemaking; specifying
13 applicability; and providing for effective dates.

14

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

1

2 **Section 1.** W.S. 9-12-1510 is created to read:

3

4 **9-12-1510. Middle-mile broadband projects.**

5

6 (a) The council may fund middle-mile broadband
7 projects upon receiving an application as provided under
8 this article. The provisions of this article shall apply to
9 middle-mile broadband projects except as otherwise provided
10 by this section. The council shall not fund middle-mile
11 broadband projects under this article unless:

12

13 (i) There is no middle-mile infrastructure or
14 functional equivalent in the proposed geographic broadband
15 service area to be served by the proposed middle-mile
16 broadband project;

17

18 (ii) The middle-mile broadband project does not
19 result in any overbuild of middle-mile broadband
20 infrastructure or the functional equivalent;

21

22 (iii) The project enables broadband internet
23 providers to provide or improve last-mile broadband

1 internet service for end users or end user devices in
2 unserved areas;

3

4 (iv) The broadband provider receiving funding
5 under this article agrees to ensure that access to any
6 infrastructure created or improved by the project is
7 provided to other broadband providers at reasonable rates;

8

9 (v) The broadband provider agrees to:

10

11 (A) Allow the council to participate in
12 arbitration of determining reasonable rates in the event of
13 unsuccessful negotiations between the funding recipient and
14 another broadband provider for access to the
15 infrastructure; and

16

17 (B) Provide to the council upon the
18 council's request any marketing information based on
19 current leases to assist the council in determining
20 reasonable rates for access to the infrastructure for the
21 project funded under this article. Any information provided
22 under this subparagraph shall be confidential and shall not
23 be disclosed by the council.

1

2 (b) The council shall promulgate rules for the
3 funding of middle-mile broadband projects as provided by
4 this section.

5

6 **Section 2.** W.S. 9-12-1404(a)(ii), 9-12-1501(b),
7 (c)(ii)(A), (B), by creating a new subparagraph (C), (d),
8 (g) and by creating a new subsection (h), 9-12-1502(c)(ii),
9 9-12-1503(a)(i) and by creating new subsections (b) and
10 (c), 9-12-1504(a)(intro), (i) and (c) and 9-12-1505(b)(vii)
11 and by creating a new paragraph (ix) are amended to read:

12

13 **9-12-1404. Economic diversification account created;**
14 **authorized expenditures.**

15

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

1 the fiscal period. Interest earned on funds in the account
2 shall be deposited to the account or appropriate
3 subaccount. Within the account shall be subaccounts. For
4 accounting and investment purposes only all subaccounts
5 shall be treated as separate accounts. The subaccounts are
6 as follows:

7

8 (ii) The broadband development subaccount.
9 Funds within this subaccount may be expended as requested
10 by the Wyoming business council and approved by the
11 governor or his designee to provide funding for agreements
12 entered into pursuant to W.S. 9-12-1501 through ~~9-12-1508~~
13 9-12-1510;

14

15 **9-12-1501. Broadband development program established;**
16 **purposes; eligibility; definitions.**

17

18 (b) Funds may be provided under this article for the
19 acquisition, deployment and installation of infrastructure
20 that supports broadband service at a minimum of at least
21 twenty-five (25) megabits per second download and three (3)
22 megabits per second upload in residential areas and ~~one (1)~~
23 gigabits—nine hundred (900) megabits per second download

1 speed and ~~one hundred (100)~~ thirty-five (35) megabits per
2 second upload speed in business corridors.

3

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

7

8 (ii) A government entity specified in the
9 following:

10

11 (A) A city, town, improvement and service
12 district or county or joint powers board; ~~or~~

13

14 (B) A tribal government of either the
15 Northern Arapaho or Eastern Shoshone tribes of the Wind
16 River Indian Reservation; ~~or~~ or

17

18 (C) A state agency as defined by W.S.
19 9-2-1002(a)(i).

20

21 (d) A governmental entity specified in subparagraph
22 (c)(ii)(A) or (B) of this section shall develop a request
23 for proposals, as prescribed by the council, on such a form

1 as may be promulgated by the council, inviting business
2 entities to participate in a project proposed for funding
3 under this article. If no eligible business entity responds
4 to the request for proposal with a proposal meeting the
5 requirements specified, the governmental entity specified
6 in subparagraph (c)(ii)(A) or (B) may apply individually,
7 or jointly with any other governmental entity specified in
8 ~~subsection (c)~~ subparagraph (c)(ii)(A) or (B) of this
9 section.

10

11 (g) The Wyoming business council shall by rule
12 establish a definition of "business corridor" for purposes
13 of this article. An area shall not be considered a business
14 corridor unless multiple businesses are, or have undertaken
15 permitting, construction or other substantial steps to be,
16 located in proximity to each other. ~~such that the provision~~
17 ~~of broadband services at the speeds specified in~~
18 ~~subsections (e) and (f) of this section is technologically~~
19 ~~and economically feasible.~~

20

21 (h) As used in this article:

22

1 (i) "Last-mile" means a broadband project for
2 fixed terrestrial infrastructure, including fixed wireless
3 infrastructure, the primary purpose of which is to provide
4 broadband internet service to end users or end-user
5 devices;

6
7 (ii) "Middle-mile" means a broadband project for
8 fiber-optic infrastructure the primary purpose of which is
9 to connect last-mile broadband infrastructure and networks
10 to network service providers.

11
12 **9-12-1502. Application process.**

13
14 (c) Funding under this article to a public private
15 partnership shall not require of the partnering business
16 entity:

17
18 (ii) Rates, terms and conditions that differ
19 from those the provider offers in its other service areas,
20 except as provided in W.S. 9-12-1510;

21
22 **9-12-1503. Application contents; application**
23 **modification.**

1

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

4

5 (i) The location of the project, including a
6 shapefile depicting the location and boundaries of the
7 proposed project area or, for a middle-mile project, a map
8 depicting the location and endpoints;

9

10 (b) The council may require an applicant to submit
11 additional information to enable the council to properly
12 assess the application for funding. The council may request
13 an applicant to modify an application based on current
14 broadband access in the proposed geographic broadband
15 service area before awarding funding under this article.

16

17 (c) The council shall, after providing opportunity
18 for public comment, promulgate rules on or before September
19 1, 2021 that identify the nature and type of information
20 provided by broadband providers to the council that shall
21 be treated as confidential, trade secret or proprietary and
22 that shall be protected from disclosure to the public. The
23 following information shall not be considered confidential,

1 trade secret or proprietary and shall be subject to
2 disclosure to the public:

3

4 (i) Publicly available information;

5

6 (ii) The name of a broadband grant applicant and
7 the amount of funding sought in their application;

8

9 (iii) Information which is to be publicly
10 posted, provided to other carriers or provided to a
11 legislative committee pursuant to W.S. 9-12-1504(a),
12 9-12-1507 or any other provision in this article;

13

14 (iv) The recipient and the amount of any
15 broadband grant award;

16

17 (v) Information supplied by a broadband provider
18 with consent from the provider to treat the supplied
19 information as public information; and

20

21 (vi) Information deemed public information by
22 the council after a hearing on the issue.

23

1 **9-12-1504. Challenge process.**

2

3 (a) Within three (3) business days of the close of
4 the funding application process, the council shall publish
5 on its official website the proposed geographic broadband
6 service area and the proposed broadband service speeds for
7 each application submitted and shall notify each broadband
8 provider who is listed with the council as providing
9 broadband service in the proposed project area of the
10 application and proposed project. The notification to each
11 listed broadband provider shall include the shapefile or
12 map submitted by the applicant under W.S. 9-12-1503(a)(i).

13 An existing broadband service provider may, within ~~thirty~~
14 ~~(30)~~fourteen (14) business days of publication of the
15 information, submit in writing to the council a challenge
16 to an application. A challenge shall contain information
17 demonstrating that:

18

19 (i) The provider currently provides or has begun
20 construction, ~~or~~ undertaken permitting or ~~other significant~~
21 steps toward construction has received, obtained approval
22 for or won an option for other federal or state funding for
23 a project in the proposed geographic broadband service area

1 to provide broadband service comparable to that in the
2 proposed project at speeds equal to or greater than the
3 speeds proposed in the application and with other
4 capabilities and project size comparable to the project
5 proposed in the application; or

6

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

21

22 **9-12-1505. Funding determinations.**

23

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

11

12 (ix) Are for projects that are economically and
13 technologically feasible for expanding broadband access in
14 unserved areas of the state.

15

16 **Section 3.** W.S. 9-12-1503(a)(ix) and (x),
17 9-12-1506(a) and 9-12-1508 are repealed.

18

19 **Section 4.** The provisions of this act shall apply to
20 all projects approved for funding under the broadband
21 development program on or after the effective date of this
22 section.

23

