

**DRAFT ONLY
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INTRODUCTION**

SENATE FILE NO. [BILL NUMBER]

Economic diversification-telecommunication services.

Sponsored by: Senator(s) SDraft

A BILL

for

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

11

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

13

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

3

4 **9-12-1501. Broadband development program established.**

5

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

11

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

17

18 (c) Eligible applicants for funding awarded under this
19 section include:

20

1 (i) A city, town or county or joint powers
2 board;

3

4 (ii) A tribal government of either the Northern
5 Arapaho or Eastern Shoshone tribes of the Wind River Indian
6 Reservation;

7

8 (iii) Business entities authorized to be formed
9 under title 17 of the Wyoming statutes, or the laws of
10 another state that are the functional equivalent, and
11 authorized to transact business in this state, if the
12 business entity applies as part of an application submitted
13 with an entity specified in paragraphs (i) or (ii) of this
14 subsection.

15

16 (d) A governmental entity specified in paragraphs
17 (c) (i) or (ii) of this section shall develop a request for
18 proposals inviting business entities to participate in a
19 project proposed for funding under this act. If no
20 eligible business entity responds to the request for
21 proposal with a proposal meeting the requirements specified

1 the governmental entity may apply individually, or jointly
2 with any other governmental entity specified in subsection
3 (c) of this section.

4

5 **9-12-1502. Application process.**

6

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

15

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

1

2 **9-12-1503. Application contents.**

3

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

6

7 (i) The location of the project;

8

9 (ii) The kind and amount of broadband
10 infrastructure to be purchased for the project, including
11 initial speeds to be achieved and initial price of the
12 service to be provided;

13

14 (iii) Evidence regarding the unserved or
15 underserved nature of the community in which the project is
16 to be located;

17

18 (iv) The number of households and businesses
19 passed that will have access to broadband service as a
20 result of the project, or whose broadband service will be
21 upgraded as a result of the project;

1

2 (v) Significant community institutions and
3 industries that will benefit from the project;

4

5 (vi) Evidence of community support for the
6 project;

7

8 (vii) The total cost of the project, including a
9 business plan;

10

11 (viii) Sources of funding or in-kind
12 contributions for the project that will supplement any
13 funding under this article, including an examination of any
14 federal grants available to the project;

15

16 (ix) Evidence that no later than six (6) weeks
17 before submission of the application the applicant
18 contacted, in writing, all entities providing broadband
19 service in the proposed project area to ask for each
20 broadband service provider's plan to upgrade broadband
21 service in the project area to speeds that meet or exceed

1 the speeds proposed in the application, within the time
2 frame specified in the proposed project activities;

3

4 (x) The broadband service providers' written
5 responses to the inquiry made under paragraph (ix) of this
6 subsection; and

7

8 (xi) Acknowledgement by the governing body, and
9 if a business entity is a participant in the application by
10 a person with legal authority to bind the business entity,
11 that funding may only be provided in accordance with a
12 contract executed in conformance with this article and is
13 subject to availability and approval of distribution of
14 funds;

15

16 (xii) If the application is not submitted jointly
17 with a business entity, an account of the request for
18 proposals issued by the governmental entity applying and
19 responses to the request;

20

1 (xiii) Additional information requested by the
2 council.

3

4 **9-12-1504. Challenge process.**

5

6 (a) Within three (3) days of the close of the funding
7 application process, the council shall publish on its
8 official web site the proposed geographic broadband service
9 area and the proposed broadband service speeds for each
10 application submitted. An existing broadband service
11 provider in or proximate to the proposed project area may,
12 within thirty (30) days of publication of the information,
13 submit in writing to the council a challenge to an
14 application. A challenge shall contain information
15 demonstrating that:

16

17 (i) The provider currently provides or has begun
18 construction or undertaken permitting or other significant
19 steps toward construction to provide broadband service
20 comparable to that in the proposed project at speeds equal
21 to or greater than the speeds proposed in the application

1 and with other capabilities and project size comparable to
2 the project proposed in the application; or

3

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

13

14 (b) The council shall evaluate the information
15 submitted in a provider's challenge under this section, and
16 is prohibited from funding a project if the council
17 determines the provider's commitment to provide broadband
18 service that meets the requirements of subsection (a) of
19 this section in the proposed project area is credible.

20

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

12

13 **9-12-1505. Funding determinations.**

14

15 (a) In evaluating applications and providing funding
16 under this article, the council shall give highest priority
17 to applications which the council determines are unserved
18 or underserved, as defined by the council through
19 consultation with the broadband advisory council.

20

21 (b) In evaluating applications and entering into
22 agreements to provide funding, the council shall give

1 priority to applications that meet one (1) or more of the
2 following criteria, with additional priority given for
3 meeting multiple criteria:

4

5 (i) Offer new or substantially upgraded broadband
6 service to important community institutions including, but
7 not limited to, libraries, educational institutions, public
8 safety facilities, and healthcare facilities;

9

10 (ii) Serve economically distressed areas of the
11 state, as measured by indices of unemployment, poverty, or
12 population loss that are significantly greater than the
13 statewide average, or provide technical support and train
14 residents, businesses, and institutions in the community
15 served by the project to utilize broadband service;

16

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

20

1 (iv) Provide evidence of strong support for the
2 project from citizens, government, businesses and
3 institutions in the community;

4

5 (v) Provide access to broadband service to a
6 greater number of unserved or underserved households and
7 businesses;

8

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

11

12 (vii) Utilizes public/private partnerships;

13

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

18

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

1

2 (c) The council shall endeavor to award grants under
3 this section to qualified applicants in all regions of the
4 state.

5

6 **9-2-1506. Limitations.**

7

8 (a) No agreement under this article may fund more than
9 fifty percent (50%) of the total cost of a project. For
10 applications submitted jointly by one (1) or more
11 governmental entity or entities and a business entity, 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 act, but shall not
19 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, the council shall publish
9 on its web site and provide to the joint minerals, business
10 and economic development interim committee a list of all
11 applications for funding under this article received during
12 the previous year and, for each application:

13

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

17

18 (ii) The amount of funding requested; and

19

20 (iii) The funding provided under this article, if
21 any.

1

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

11

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

13

14 (a) The council shall establish by rule minimum
15 business and residential upload and download speeds which
16 broadband projects must meet upon completion of
17 construction to qualify for funding under this article. In
18 establishing minimum speeds the council shall consider
19 speeds established by the federal communications commission
20 as minimums necessary to be considered "advanced
21 telecommunications capability and speeds needed to attract
22 businesses to Wyoming communities." Speeds adopted by the
23 council shall meet or exceed a download speed of twenty-

1 five (25) megabits per second and an upload speed of three
2 (3) megabits per second. For projects primarily serving
3 business entities the minimum speed adopted by the council
4 shall be one (1) gigabits per second download speed and one
5 hundred (100) megabits per second upload speed, commencing
6 January 1, 2022.

7

8 **9-12-1509. Advisory council; broadband coordinator.**

9

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

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

10

11 (b) The advisory council shall:

12

13 (i) Inventory and maintain an inventory of
14 current broadband infrastructure, and identify areas of the
15 state underserved or unserved by broadband technology;

16

17 (ii) Solicit comments on and recommendations on
18 needs, practices and technologies for providing broadband
19 services in the most efficient manner possible, to
20 accommodate economic growth, diversification and
21 development, and enhance education opportunities;

22

1 (iii) Coordinate with the economically needed
2 diversity options for Wyoming (ENDOW) executive council,
3 the state chief information officer and local and tribal
4 governmental entities to ensure that state and local
5 policies are conducive to development of broadband
6 services. This coordination shall include review of the
7 development and use of the state unified network under W.S.
8 9-2-2906 to ensure limitations on the use of the network do
9 not unduly restrict the most efficient use of the network;

10

11 (iv) Advise the business council on applications
12 received under this article as requested by the council;

13

14 (v) Propose to the council:

15

16 (A) Definitions of underserved and unserved
17 broadband areas;

18

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

21

22 (c) The business council shall, in consultation with
23 the (ENDOW) executive council and the governor's office,

1 designate an employee of the business council as
2 coordinator of broadband services. The person designated
3 shall have expertise in telecommunications and specifically
4 in the provision of broadband services. As directed by the
5 business council, the coordinator shall staff the broadband
6 advisory council. The coordinator shall undertake other
7 duties as assigned by the council in consultation with the
8 governor's office. The council may contract with a
9 consultant to provide services to the broadband advisory
10 council and to the business council under this act.

11

12 **Section 2.** W.S. 9-2-2906(b)(xii), 9-12-102(a)(viii),
13 9-12-103(f), 9-12-105(a) by creating a new paragraph (ix),
14 9-12-1401(a) and 9-12-1404(a) are amended to read:

15

16 **9-2-2906. Office of the state chief information**
17 **officer and director; authority; duties of department.**

18

19 (b) The department shall carry out the following
20 coordination and management functions:

21

22 (xii) Enhance statewide broadband adoption and
23 coordination among all governmental users ~~and where~~

1 ~~possible among the citizens of the state~~ in coordination
2 with the Wyoming business council and its broadband
3 advisory council.

4
5 **9-12-102. Definitions.**

6
7 (a) As used in this act, the following terms have the
8 following meanings, except where the context clearly
9 indicates otherwise:

10
11 (viii) "This act" means W.S. 9-12-101 through ~~9-~~
12 ~~12-1312~~ 9-12-1509.

13
14 **9-12-103. Wyoming business council; creation;**
15 **composition; compensation; termination; meetings; surety**
16 **bonds; fiscal control.**

17
18 (f) The council may also form committees and advisory
19 councils, which may include representatives who are not
20 members of the board, to undertake more extensive study and
21 discussion of the issues before the board. The council
22 shall form an advisory council for broadband development

1 and designate a broadband coordinator in accordance with
2 W.S. 9-12-1509.

3

4 **9-12-105. Economic development services.**

5

6 (a) It shall be the duty of the council to encourage,
7 stimulate and support the development and expansion of the
8 economy of the state. The council is charged with the
9 following duties and responsibilities:

10

11 (vii) To encourage the export of products and
12 services from the state to national and international
13 markets; ~~and~~

14

15 (ix) To adopt a state broadband enhancement plan.

16

17 **9-12-1404. Economic diversification account created;**
18 **authorized expenditures.**

19

20 (a) There is created an economic diversification
21 account. All monies in the account are continuously
22 appropriated to the office of the governor to be used
23 ~~solely~~ for the purposes of this article and as otherwise

1 specified by law, including per diem, mileage and other
2 administrative expenses of the ENDOW executive council.
3 Notwithstanding W.S. 9-2-1008 and 9-4-207, funds in the
4 account shall not lapse at the end of the fiscal period.
5 Interest earned on funds in the account shall be deposited
6 to the account. Within the account shall be subaccounts.
7 For accounting investment purposes only all subaccounts
8 shall be treated as separate account. The subaccounts are
9 as follows:

10

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

16

17 (b) The governor may accept, and shall deposit
18 to the account, or to the appropriate subaccount within the
19 account, any gifts, contributions, donations, grants or
20 federal funds specifically designated for purposes of this
21 article or other ENDOW related program.

22

23 **Section 3.**

1

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

6

7 (i) Three hundred fifty thousand dollars
8 (\$350,000.00) to the business council, for purposes of W.S.
9 9-12-1509. The appropriations contained in 2018 House Bill
10 1 to the economic diversification account created by W.S.
11 9-12-1404 shall be reduced dollar for dollar by the
12 appropriation in this paragraph;

13

14 (ii) Twelve million dollars (\$12,000,000.00) to
15 the broadband development subaccount Wyoming created by
16 W.S. 9-12-1404(a)(i). No funds from this appropriation
17 shall be expended, obligated or encumbered until adoption
18 of the broadband enhancement plan under W.S. 9-12-
19 105(a)(ix). Notwithstanding any other provision of law,
20 funds appropriated under this section shall not be
21 transferred or expended for any purpose other than as
22 provided in W.S. 9-12-1404(a)(i). Notwithstanding W.S. 9-

1 2-1008 and 9-4-207, funds in the broadband development
2 account shall not lapse at the end of the fiscal period.

3

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

8

9

(END)