

ORIGINAL SENATE
FILE NO. SF0076

ENROLLED ACT NO. 65, SENATE

SIXTY-SIXTH LEGISLATURE OF THE STATE OF WYOMING
2021 GENERAL SESSION

AN ACT relating to the broadband development program; creating requirements for providing funding for middle-mile broadband projects; defining terms; amending minimum speed requirements for projects funded under the program; specifying eligible applicants for funding; amending rulemaking authority and requirements for the program; amending application contents; providing for the confidentiality of certain application materials; amending procedures for the challenge process; specifying additional funding priorities; amending and repealing limitations on funding projects; repealing rulemaking requirements for broadband speeds; requiring rulemaking; specifying applicability; and providing for effective dates.

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

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

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

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

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

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

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(iii) The project enables broadband internet providers to provide or improve last-mile broadband internet service for end users or end user devices in unserved areas;

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

(v) The broadband provider agrees to:

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

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

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

Section 2. W.S. 9-12-1404(a)(ii), 9-12-1501(b), (c)(ii)(A), (B), by creating a new subparagraph (C), (d), (g) and by creating a new subsection (h), 9-12-1502(c)(ii), 9-12-1503(a)(i) and by creating new subsections (b) and

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(c), 9-12-1504(a)(intro), (i) and (c) and 9-12-1505(b)(vii) and by creating a new paragraph (ix) are amended to read:

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

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

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

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

(b) Funds may be provided under this article for the acquisition, deployment and installation of infrastructure that supports broadband service at a minimum of at least twenty-five (25) megabits per second download and three (3)

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megabits per second upload in residential areas and ~~one (1) gigabits~~ nine hundred (900) megabits per second download speed and ~~one hundred (100)~~ thirty-five (35) megabits per second upload speed in business corridors.

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

(ii) A government entity specified in the following:

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

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

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

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

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

(h) As used in this article:

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

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

9-12-1502. Application process.

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

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

9-12-1503. Application contents; application modification.

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

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

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

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

(i) Publicly available information;

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

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

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

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

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

9-12-1504. Challenge process.

(a) Within three (3) business days of the close of the funding application process, the council shall publish on its official website the proposed geographic broadband service area and the proposed broadband service speeds for each application submitted and shall notify each broadband provider who is listed with the council as providing broadband service in the proposed project area of the application and proposed project. The notification to each listed broadband provider shall include the shapefile or map submitted by the applicant under W.S. 9-12-1503(a)(i). An existing broadband service provider may, within ~~thirty (30)~~ fourteen (14) business days of publication of the information, submit in writing to the council a challenge to an application. A challenge shall contain information demonstrating that:

(i) The provider currently provides or has begun construction, or undertaken permitting or other significant steps toward construction has received, obtained approval for or won an option for other federal or state funding for a project in the proposed geographic broadband service area to provide broadband service comparable to that in the

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proposed project at speeds equal to or greater than the speeds proposed in the application and with other capabilities and project size comparable to the project proposed in the application; or

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

9-12-1505. Funding determinations.

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

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

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

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

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

Section 5. The Wyoming business council shall promulgate all rules necessary to implement the provisions of this act.

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Section 6.

(a) Except as provided in subsection (b) of this section, this act is effective July 1, 2021.

(b) Sections 5 and 6 of this act are effective immediately upon completion of all acts necessary for a bill to become law as provided by Article 4, Section 8 of the Wyoming Constitution.

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the Senate.

Chief Clerk