

ENROLLED ACT NO. 36, SENATE

SIXTY-FOURTH LEGISLATURE OF THE STATE OF WYOMING
2018 BUDGET SESSION

AN ACT relating to economic diversification; creating a broadband development program; specifying requirements for providing funds for projects under the program; providing for administration by the Wyoming business council; requiring rules and specifying procedures; providing for the establishment of a broadband advisory council; providing for the position of broadband coordinator; providing appropriations; restricting appropriations as specified; modifying other appropriations; and providing for an effective date.

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

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

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

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

(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) megabits per second upload in residential areas and one (1) gigabits per second download speed and one hundred (100) 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:

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(i) A business entity authorized to be formed under title 17 of the Wyoming statutes, or the laws of another state that are the functional equivalent, which is authorized to transact business in this state and has experience installing broadband infrastructure and providing broadband services in rural areas; and

(ii) A government entity specified in the following:

(A) A city, town 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.

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

(e) As used in this article, until established otherwise by rule of the Wyoming business council pursuant to subsection (f) of this section, "unserved area" is an area in which there exists no fixed terrestrial broadband

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service, or in which the maximum fixed terrestrial broadband speed available:

(i) To residential customers is ten (10) megabits per second download and one (1) megabit per second upload;

(ii) To a business corridor within a municipality:

(A) With a population of less than two thousand (2,000), is twenty-five (25) megabits per second download and three (3) megabits per second upload;

(B) With a population of two thousand (2,000) or more, is fifty (50) megabits per second download and five (5) megabits per second upload.

(iii) To a business corridor in an unincorporated area of a county, is twenty-five (25) megabits per second download and three (3) megabits per second upload.

(f) The Wyoming business council shall, by rule effective on July 1, 2020, modify the definition of "unserved area" for purposes of this article. The rule shall only modify the definition by providing for upload and download speeds exceeding those specified in subsection (e) of this section as the business council determines appropriate for technological conditions prevailing as of July 1, 2020.

(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

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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.

9-12-1502. Application process.

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

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

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

(i) An open access network;

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

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(iii) Rate regulation; or

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

9-12-1503. Application contents.

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

(i) The location of the project;

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

(iii) Evidence regarding the unserved nature of
the area where the project is to be located;

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

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

(vi) Evidence of community support for the
project;

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

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(viii) Sources of funding or in-kind contributions for the project that will supplement any funding under this article, including an examination of any federal grants available to the project. The application shall identify the amount of funding for the project to be provided by each governmental entity and by any business entity participating in the project. Funding provided by any other state source shall be specifically identified;

(ix) Evidence that no later than six (6) weeks before submission of the application the applicant contacted, in writing, all entities who are listed with the counsel as providing broadband service in the proposed project area to ask for each broadband service provider's plan to upgrade broadband service in the project area to speeds that meet or exceed the speeds proposed in the application, within the time frame specified in the proposed project activities;

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

(xi) Acknowledgement by the governing body, and any partnering business entity by a person with legal authority to bind the business entity, that funding may only be provided in accordance with a contract executed in conformance with this article and is subject to availability and approval of distribution of funds;

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

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(xiii) Additional information requested by the council.

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. An existing broadband service provider may, within thirty (30) 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 to provide broadband service comparable to that in the 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

(ii) The provider commits to complete construction of broadband infrastructure and provide broadband service comparable to that in the 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 no later than eighteen (18) months after the funding determinations are to be made under this section for the application submitted.

(b) The council shall evaluate the information submitted in a provider's challenge under this section, and

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is prohibited from funding a project if the council determines the provider is currently providing broadband service or the provider's commitment to provide broadband service that meets the requirements of subsection (a) of this section in the proposed project area is credible.

(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 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 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.

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

(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:

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

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

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

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

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

(vi) Provide comparability to service offered in urban areas, both in speed and pricing by reference to standards published by the Federal Communications Commission;

(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

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

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

9-12-1506. Limitations.

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

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

(c) The council shall, by rule, adopt provisions to ensure that adequate consideration is provided for the expenditure of public funds on projects funded under this article.

9-12-1507. Application evaluation report.

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

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

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- (ii) The amount of funding requested; and
- (iii) The funding provided under this article, if any.

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

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

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

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

(a) The business council shall, in consultation with the economically needed diversity options for Wyoming (ENDOW) executive council, establish a broadband advisory council consisting of eleven (11) members. One (1) member shall be the state chief information officer or his designee. Remaining members shall be appointed by the council from the public at-large, with geographic diversity and to include diverse interests, including backgrounds in economic development, state or local government entities, broadband providers, technology related businesses, health care, education, library services and public safety. At least one (1) representative of the Northern Arapaho or Eastern Shoshone tribes of the Wind River Indian Reservation shall be appointed to the advisory council. One (1) senator appointed by the president of the senate and one (1) representative appointed by the speaker of the house shall serve as legislative liaisons to the advisory council. Legislative liaisons shall be paid salary, per diem and mileage as provided in W.S. 28-5-101 when attending meetings of the advisory council. Members of the advisory council shall receive no salary, but shall be reimbursed under W.S. 9-3-102 and 9-3-103 for per diem and travel expenses incurred in the performance of their duties.

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

(i) The development of an inventory and map of current broadband availability, as provided by voluntary submission from broadband providers and derived from other resources, including Federal Communications Commission

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reports, and identification of areas of the state unserved by broadband technology;

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

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

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

(v) Propose to the council:

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

(B) Not later than March 1, 2020, propose recommended changes to upload and download speeds specified in the definition of unserved areas, including unserved residential and business corridors.

(c) The business council shall, in consultation with the ENDOW executive council and the governor's office, designate an employee of the business council as coordinator of broadband services. The person designated shall have expertise in telecommunications and specifically in the provision of broadband services. As directed by the business council, the coordinator shall staff the broadband advisory council. The coordinator shall, with approval of

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the business council, accomplish the tasks set forth in paragraphs (b)(i) through (v) of this section and undertake other duties as assigned by the business council in consultation with the governor's office. The business council may contract with a consultant to provide services to the broadband advisory council and to the business council under this act.

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

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

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

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

9-12-102. Definitions.

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

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

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

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

9-12-105. Economic development services.

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

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

(ix) To adopt a state broadband enhancement plan.

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 ~~solely~~ 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.

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Notwithstanding W.S. 9-2-1008 and 9-4-207, funds in 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:

(i) 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.

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

Section 3.

(a) There is appropriated from the legislative stabilization reserve account:

(i) Three hundred fifty thousand dollars (\$350,000.00) to the Wyoming business council, for purposes of W.S. 9-12-1509;

(ii) Ten million dollars (\$10,000,000.00) to the broadband development subaccount within the economic diversification account. No funds from this appropriation shall be expended, obligated or encumbered until adoption of the broadband enhancement plan under W.S. 9-12-105(a)(ix). Notwithstanding any other provision of

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law, funds appropriated under this section shall not be transferred or expended for any purpose other than to provide funding for agreements entered into pursuant to W.S. 9-12-1501 through 9-12-1508, as requested by the Wyoming business council and approved by the governor or his designee. Notwithstanding W.S. 9-2-1008 and 9-4-207, funds in the broadband development subaccount shall not lapse at the end of the fiscal period.

(b) Upon the effective date of this section:

(i) The appropriation contained in 2018 House Bill 0001, section 321(a)(ii) to the economic diversification account created by W.S. 9-12-1404(a) shall be reduced two million dollars (\$2,000,000.00);

(ii) 2018 House Bill 0001, section 321(a)(ii)(B) shall not be effective;

(iii) The appropriation contained in 2018 House Bill 0001, section 321(a)(iii) to the economic diversification account created by W.S. 9-12-1404(a) shall be reduced eight million dollars (\$8,000,000.00).

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FILE NO. SF0100

ENGROSSED

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Section 4. This act is 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