
CHAPTER 2

Impact of WBC Quasi-Governmental Status on State's Investment in Economic Development Is Indeterminable

Chapter summary

The 1997 Steering Committee believed that the corporate structure would provide a greater return on investment for the state's economic development initiative.

The 1997 Steering Committee recommended a corporate structure for the Wyoming Business Council, believing that “by emulating the corporation in structure and performance, Wyoming can provide more effective leadership and a greater return on investment in its economic development initiative.” The Legislature responded by placing numerous exemptions in statute which primarily give the WBC flexibility with respect to budgeting and personnel decisions. The statute also gives the WBC board the autonomy to direct WBC activities through its appointment of the WBC chief executive officer.

At this point, approximately seven years into its existence, we can discuss the impact the exemptions and autonomy have had on some aspects of WBC operations. However, because the WBC has not determined how to measure performance of its efforts (as discussed in Chapter 4), we cannot confirm that the quasi-governmental status has increased the state's return on its economic development investment as the Steering Committee envisioned.

Statute provides WBC administrative flexibility through exemptions

WBC is exempt from most A&I statutes for managing government operations.

Statute specifically exempts WBC from a series of requirements that apply to other agencies (W.S. 9-2-1001 through 9-2-1026.1.) Essentially, these are the statutes that provide the Governor, working through the Department of Administration and Information (A&I), the capability to manage the executive branch of state government through “a more coordinated and responsive” system. These statutes include functions such as budget, human resources, procurement, information technology, and economic analysis. Some of the most prominent of these exemptions are those that release WBC from:

- Procuring supplies or services in compliance with A&I procurement rules.
- Adopting the A&I personnel classification and compensation plans or other personnel rules.
- Submitting statistical, informational or research programs to the A&I Division of Economic Analysis for supervision and coordination.
- Adhering to state employee travel expense rates.

WBC is also exempted from provisions of the Wyoming Administrative Procedure Act except as its statutes specifically require compliance. Thus, if it adopts rules, it must submit them for legislative review, have them approved by the Governor, and file them with the Secretary of State.

Attorney General: “WBC is a state agency.”

“All (WBC) powers are derived from statutes.”

Despite these exemptions, and language in statute that calls WBC a “body corporate” and a “state instrumentality,” the Attorney General has opined that WBC is a state agency. Factors that contribute to this opinion include: (1) WBC is a statutory creation, with its existence and termination a matter of legislative control through statutes; (2) the WBC board establishes the salary of the director, and those board members are appointed by the Governor; (3) WBC is organized for a governmental purpose; (4) WBC is exempt from taxation; and (5) all powers are derived from statutes. The Attorney General also wrote that WBC was a state agency for purposes of dispensing the market pay adjustment funds appropriated by the Legislature in 2001 and 2004.

WBC acts mostly like a state agency

WBC promulgates rules and is subject to the Open Records and Public Meeting Acts.

For the most part, WBC assiduously follows its authorizing statutes, often invoking the direction and limitations that statutes include. WBC officials noted that although the organization has certain flexibility, they are quite aware that the Legislature is “the real board of directors.” WBC has developed rules for its Wyoming Business Ready Community and loan programs, and plans to develop them for the newly-authorized Community Facilities program. It is subject to the Open Records and Public Meeting Acts.

WBC employees participate in the same benefit plans as do regular state employees.

WBC is also like state agencies in more administrative matters. Although statutes allow it to obtain liability insurance on its own, it is part of the state self insurance program. Even though WBC had a separate health insurance plan at one time, it now participates in the State Employees and Officials Group Insurance Act as statute requires. By statute, WBC employees are covered by the Wyoming Retirement Act and may participate in the Wyoming Deferred Compensation plan. WBC uses the services of the Attorney General for its legal needs, and its budget must go through the A&I and Governor's review process before being presented to the Legislature.

There are six WBC employees, the regional directors, in the regional offices.

Most WBC staff work in Cheyenne

The 1997 Steering Committee report envisioned that the regional offices would house most of the WBC staff, and that the strength of the organization would be in regionalization and the local delivery of services. Eight years later, this vision is partly realized. While the regional directors are credited with adding unmatched strength to the WBC effort and being critical to operations, there are only six WBC employees in the field; these are the six regional directors, one of whom also serves as Director of Field Operations. The remaining 40 WBC employees, not including those in Travel and Tourism, are based in Cheyenne.

WBC also considers the Small Business Development and Mid-America Manufacturing Technology Centers, which are co-located in many of the regions, to augment its field services. WBC partially funds these entities through contracts with the University of Wyoming. In addition, Cheyenne office staff provide assistance to the regional offices and to communities when called upon to do so.

The Steering Committee said employees should be at-will.

WBC turnover has been comparable to that of state government

To better conform to the business model, the Steering Committee report recommended that the employees of the state's new economic development organization be at-will employees. Statute authorizes the WBC chief executive officer to determine what other WBC positions exist and the terms of employment for the persons filling those positions. The WBC board approves its own

Exemptions from some A&I statutes define WBC employees' at-will status.

personnel policies, one of which is that employees serve at-will, like attorneys in the Office of the Attorney General and all Legislative Service Office employees.

Although not explained in the WBC policies, its exemption from the A&I Human Resources Division statute (W.S. 9-2-1022) means that its employees are not covered by A&I personnel standards governing employee leave time, grievances, layoffs, and other aspects of employment. WBC does not award its employees longevity pay, but their time in WBC employment counts toward longevity if they should transfer to another agency.

Average WBC turnover has been comparable to state employee turnover, only more erratic.

A review of WBC turnover since 1999 indicates that there have been changes in all levels of the organization, from CEO to administrative assistant positions. More than half of the reported 53 instances of turnover have occurred in management positions (CEO, Chief Financial Officer, Chief Support Services Officer), directors, and managers. WBC average turnover over the four-year period, 2000-2003, was just slightly higher than that of all state agencies for the same period (13.9 percent to 13.6 percent). Turnover has been more erratic at WBC, ranging from just less than two percent to 25 percent, and higher than the turnover in other small agencies (less than 100 employees).

Of the four separation categories recorded for WBC employees (resignation, retirement, transfer, and death), resignation is listed for most instances. However, the CEO indicated that a number of these resignations occurred because people did not fit the organization and that the at-will policy has helped WBC maintain a high quality staff.

WBC is funded by the state

The Steering Committee anticipated that the new state approach to economic development would include the investment of both private and public resources. Statutes foster the possibility that private funds would contribute to WBC through several provisions, including those that allow WBC to:

Statutes foster the

- Accept gifts or grants.
- Acquire and sell property, or interest in property

prospect that WBC would receive private funding.

- trademarks, copyrights, or patents.
- Mortgage or pledge any or all of its revenue, income, or interest in or assets arising out of a venture agreement.
 - Make investments in projects that have the potential to stimulate economic development in the state.
 - Invest and manage its funds.

WBC has not exercised these options because the Attorney General has determined that doing so would be a violation of Article XVI, Section 6 of the Wyoming Constitution which prohibits the state from becoming the owner of the capital stock of any association or corporation.

Attorney General: Wyoming Constitution prohibits WBC from owning equity in corporations.

As for grants and gifts, WBC officials said that seeking those contributions from in-state sources would mean competing with local economic development organizations. They said this would be counter-productive to WBC effort in supporting those entities. WBC has reported the funds received from private sources for WBC activities, as law requires. Over the last five years, private sources have contributed an average of \$227,543 annually.

Statutory requirements limit WBC programmatic flexibility

87% of FY '05 – '06 resources support inherited or statutory functions.

Although there is the perception that WBC has more organizational flexibility than other agencies, 87 percent of WBC resources support inherited or mandated functions, leaving 13 percent for discretionary programs or activities. The WBC was formed, in part, to alleviate some of the perceived fragmentation in state-level economic development efforts. The Legislature followed the Steering Committee recommendation and gathered many state-level economic development programs together into one cohesive entity.

For example, promoting and developing tourism and agriculture now are among WBC statutory responsibilities. Statute calls for the establishment of regional offices and a coordination /compilation of Wyoming business permitting requirements; WBC has also chosen to establish a market research center, as statute allows. Figure 2.1 shows the resources currently devoted to these statutory requirements as well as the targeted grant and loan

programs.

Figure 2.1

WBC Dedicated Program Funding, FY '05 – '06

Program	Number of Employees	Appropriated/ Allocated Funds (FY '05 - '06)	Percent of WBC Appropriations
Travel and Tourism	18	\$17,495,023	20.65%
Agriculture Promotion (Agribusiness)	5	\$1,572,414	1.86%
Permitting	1	\$130,560	0.15%
Market Research Center (only for FY '05)	-----	\$168,000	0.20%
Regional Offices	6	\$1,536,982	1.81%
Subtotal	30	\$20,902,979	24.60%
Targeted Grant and Loan Programs			
Administration	5	\$859,256	1.01%
Business Ready Communities	-----	\$36,600,000	43.20%
Community Development Block Grant	-----	\$7,844,061	9.26%
Community Facilities Enhancements	-----	\$7,500,000	8.85%
Subtotal	5	\$52,803,317	62.33%
Total Dedicated Program Funding	35	\$73,706,296	87.00%
WBC Appropriations	64	\$84,717,596	100.00%

Source: LSO analysis of WBC information.

WBC's flexibility is in determining the amount of resources it will dedicate to these functions

Although the statutory programs must be maintained, WBC has flexibility in allocating its resources among all of its programs and divisions, with the exception of the funds it receives for special programs such as BRC and CDBG. The Legislature has put in place a process that does not require its approval of WBC's budgets for various programs, operational divisions, or number of full-time equivalent (FTE) employees. A benefit of the flexibility according to WBC officials is the ability to move staff around, reconfigure divisions, and create new positions as needed.

WBC can reassign staff, reconfigure divisions, and create new positions as needed.

Regional services

Thus, WBC can choose how to implement these programs and how to allocate resources among the different budget series (personnel, support services, etc.) in order to best facilitate the growth of the economy. Our analysis shows that despite this

are seen as most critical, yet only 11% of WBC non-grant funds directly support regional offices.

flexibility, only 11 percent of WBC non-grant funds directly support the regional offices, including the regional directors and WBC contracts with University entities. Yet, WBC officials and stakeholders indicate that the regional services are most critical to WBC operations. A similarly small proportion of WBC appropriations (one percent) supports the BRC program, another crucial element of the state's economic development. BRC administration, as discussed in Chapter 5, may be hampered by this lack of resources.

WBC combines state policies with its own approach to employee compensation

WBC has followed many state personnel policies.

In the area of employee compensation and position classification, WBC has taken advantage of both state policies and its own flexibility. To make WBC more accountable, the Steering Committee maintained that WBC employees needed to serve at-will, and that their professional staff requirements necessitated separation from the state personnel policies and salary structure. Yet WBC has followed some state policies such as the 2003 state freeze on compensation adjustments, and had its positions slotted for market-rate adjustments. WBC employees also receive the three percent cost-of-living increase that all state employees receive, when it is awarded. WBC is not now awarding raises based upon merit, although its personnel policies allow this and board members have expressed a preference for merit increases.

Most WBC salaries are above the statewide average

77% of WBC employees have salaries above the statewide averages.

As a result of the November 2004 round of pay adjustments at the WBC, 77 percent of WBC employees receive salaries above the statewide averages for their equivalent position classifications, according to A&I Human Resources Division. A&I is able to make this analysis because WBC requested a review of its positions so WBC employees would be eligible to receive 2004 market-pay adjustments. Five employees received raises based upon this analysis, and WBC employees' salaries now range from \$21,000 to \$142,000, with a median salary of \$46,600.

For now, WBC has suspended its merit

Since the end of 2003, WBC has limited its pay increases to comply with the compensation raise options allowed by the Governor. While following these options, WBC has awarded

pay increases and distributes the 3% cost-of-living increase when it is available to all state employees.

raises only to employees who have assumed additional job responsibilities or have been promoted. Thus WBC, like other agencies, is following the Governor's direction to suspend individual agency compensation policies and performance increases.

Many WBC employees have the titles of "director" or "manager."

Many WBC employees carry the title of "manager" or "director" but do not have the supervisory responsibilities that similar titles would require in the state system (see Appendix C for WBC current position titles). In the state system, "director" is limited to those who direct entire agencies, whereas in the WBC system, it corresponds to a division director. So, when A&I compared salaries, it compared WBC directors to state administrators. To be a "manager," a regular state employee must oversee a minimum of three people above the administrative specialist level. In the WBC, employees receive these titles when they have programmatic and not necessarily supervisory responsibility.

Comparators: the WBC Investment Ready Community division and the Office of State Lands and Investments Government Grant and Loan section.

Administration cost for a WBC program is higher than for a similar state agency program

A&I's analysis of equivalent WBC and state positions is one way to see how the two systems compare. To add to our understanding of how state appropriations for similar programs in WBC and in a regular state agency compare, we looked at the WBC Investment Ready Community (IRC) division and the Office of State Lands and Investments Government Grant and Loan (GGL) section. The GGL section administers \$95 million in grant and loan monies for local infrastructure projects, while the IRC division administers \$44.4 million (both totals are for the FY '05 – '06 biennium) for a similar purpose. We found that the GGL section has 1.5 fewer positions (at 58.5 percent of WBC salary costs for the IRC division), but administers more than twice the funding.

The benefit of WBC's quasi-governmental status is subtle, one of perception

Local stakeholders do not perceive that the WBC's quasi-governmental status has a measurable impact on the agency's service provision or delivery. Some noted a general business reluctance to deal with government bureaucrats, and think the

Affiliation with government enables WBC to invoke the cachet of the entire state in recruiting.

image of a corporate structure aids in business recruitment. Others have noted that a benefit of WBC is that it brings the cachet of the entire state to bear in recruiting desired businesses. In general the issue seems to be one of perception and image rather than one of substance or function in a limited area of WBC operations; however, as one stakeholder noted, “It’s a subtle but profound distinction.”

25% of WBC personnel are in support services.

Legislative exemptions lead to a high level of support services

Because of its quasi-governmental status, WBC has recreated some of the A&I functions from which statute exempts it. For example, WBC has its own human resources professional and payroll staff (although the State Auditor’s Office handles its payroll), comptroller and accounts payable specialist, and a number of administrative assistants. These support services unattached to programs required by statute amount to 25 percent of its personnel and \$2.3 million in biennial expenses, or almost 12 percent of the WBC non-grant and non-tourism biennial budget. Through negotiation with the Travel and Tourism Board, WBC is receiving approximately \$175,000 from that division in partial funding of these support services for the current biennium.

Status creates some discord with other state agencies over statistical reporting

One of the exemptions created for WBC was the statutory authority to collect and report economic performance data without the A&I Division of Economic Analysis oversight that covers other agencies (W.S. 9-2-1024 (a) (ii)). However, controversy over statistics in early WBC reports led to the addition of a legislative footnote in the WBC 2001-2002 biennial budget requiring a Memorandum of Understanding (MOU) between WBC, A&I’s Economic Analysis Division, and the Department of Employment’s Research and Planning Division for how specified economic data would be published.

The MOU between WBC and two state data agencies may no longer be in effect.

WBC staff provided a mixed response regarding the implementation and current status of this MOU, while officials at the other two agencies say the MOU is now expired. WBC continues to list the other agencies’ names on its quarterly and annual reports of the benchmark data, required by law. To create

these reports, WBC uses the published data of the other two agencies, in addition to purchasing data from other sources, and adds an executive summary component. Both WBC and state officials acknowledge that WBC is interested in data that it can use to promote economic development, and that the other two agencies use data for different purposes.

WBC strategically chooses when to apply its quasi-governmental status

WBC officials frankly acknowledge that both aspects of its status have advantages, and the determination of which to emphasize when is strategic. For example, WBC sees the access to BRC funding as a major advantage of its governmental status. This funding is made possible by the revenues the state receives from the current minerals industry boom. If WBC were independent from state government, it would not have access to that level of funding, reasoned a former board member.

Funding flexibility allows WBC to fund its priorities without the approval of the Legislature or Governor, if it determines to do so.

At the WBC operational level, the CEO recognizes the value of being a state agency when across-the-board or market-based pay raises are available, and yet still having the independence to set higher salaries and discuss mutually-agreed upon resignations with some employees. Funding flexibility gives WBC a way to fund projects that the Legislature and Governor may not agree are priorities, such as the 2005 Wadley-Donovan targeted industry and workforce/underemployment study. Finally, WBC officials and stakeholders agree there are instances in which it enhances WBC perception to be able to shed the bureaucratic trappings of a state agency. Yet, we also heard that it is of great benefit for WBC to provide access to high-level agency officials when it is assisting communities working with business people.

Conclusion: It is not possible to objectively determine whether WBC's quasi-governmental status is beneficial and necessary.

It was clear from previous reports that the fragmented structure that had been in place for the state's economic development effort

WBC has not developed “real world” accountability measures to gauge its impact.

did not work, so the Legislature created something different. A critical element of that plan was that the new economic development entity have a corporate structure, rather than be a regular state agency. At this point, we cannot comment about the effectiveness of WBC’s organizational structure because, as is developed more thoroughly in Chapter 4, WBC has not developed measures with which to gauge its performance, although they do claim to have an impact. For the Legislature to evaluate the success of quasi-governmental status, WBC needs to provide the “real world” accountability measures that were promised when the WBC was envisioned and created.

The WBC quasi-governmental structure may not inherently be necessary and beneficial to the state’s economic development efforts, nor is it necessarily optional and extravagant. Other than anecdotally, we cannot discern whether or not the quasi-governmental status has increased the state’s return on investment in its economic development investment, as the Steering Committee envisioned. What can be said with certainty is that in terms of salaries, the investment is higher. Further, as discussed in Chapter 2, WBC has developed its role as one of primarily working within the state to provide services and information to communities and residents, much like other state agencies.

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