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# **AGENCY RESPONSE**

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**Wyoming Business Council**

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July 7, 2005

Honorable Randall Luthi  
Wyoming House of Representatives  
Chairman, Management Audit Committee  
Capitol Building  
Cheyenne, Wyoming 82002

Dear Representative Luthi:

Thank you and the members of the Management Audit Committee for your counsel and guidance at the June 20, 2005 meeting in Thayne. I have asked the Business Council and staff to help with comments on how to make the Business Council better. The following are suggestions to continue the dialogue started in Thayne:

1. The Business Council - is it a state agency, independent organization or something in the middle? And what should it be?

(a) Applicable parts of the statute:

(i) WS 9-12-103(a) "There is created the Wyoming business council. The council is a body corporate operating as a state instrumentality."

(ii) WS 9-12-103(g) "The following provisions do not apply to the council: (i) WS 9-2-1001 through 9-2-1026.1; (ii) WS 9-3-101 through 9-3-105; (iii) The Wyoming Administrative Procedures Act."

(b) Comments:

(i) An Attorney General opinion (Attachment 1) shows the Council is an Executive branch agency, not an independent organization. The Council submits its budget as part of the Governor's Budget, reports to the Joint Minerals, Business and Economic Development Committee and Joint Travel, Recreation, Wildlife and Cultural Resources Committee. The Council and staff comply with the state ethics policies and potential liability is covered by the state.

(ii) The statute exceptions are from: state contract procedures, state procedures for the acquisition of computer and telecommunications equipment, state personnel classification, arbitration, compensation, salaries, travel and meal expenses.

(iii) The Council appropriation is different from other state agencies. It is one sum without dictating how much for personnel and program. However, compliant

with state budgeting procedures, the Council submits its biennium budget and exception items in the form prescribed by the Governor.

(iv) Some believe the Council should be:

(A) a totally separate entity, for example a contract agency. Since taxpayer money funds the operation it needs to help any business/community in the state. An independent business would not operate this way, but target its operations to maximize return on investment. The need to help all in-need precludes it from being a totally independent organization.

(B) just like any other state agency thus have no exemptions from state policies and procedures.

(c) Recommendation: The experiment to make this organization more business-like has resulted in an entity that is operating programs that are having a positive effect on communities and businesses. Recommend no change to the statute dealing with the character of the organization.

## 2. Equity

(a) Applicable part of the statute, WS 9-12-104

(b) Comments:

(i) In several paragraphs in this section of the statute there is the underlying premise that the Council can take and use equity positions. (See WS 9-12-104(v), (vi), (vii), (ix))

(ii) The Attorney General opinion at Attachment 2 was requested when the Council wanted to take an equity position with funds being loaned to a company. This is a very common business practice. If money is lent to a company, part of the payback is not just the loan repayment, but also a provision that as the company does better, the Council (taxpayers) should participate in the “upside” of the business.

(iii) Equity is probably the most likely vehicle that could provide funding for Council operation, thus lessening the requirements for appropriations from the State General Fund.

(iv) Due to several factors (the Attorney General’s opinion, lack of business acumen in this arena by the staff and the prior unsuccessful state attempts to use equity) the Council has not put this “tool” to use.

(v) There are several members of the Council who are expert in this area; there should be dialogue between the Management Council and these members to work this issue.

(c) Recommendation: Legislature work with the Council and Attorney General to develop a proposal that allows the Council to take equity positions. The finalization of the proposal would by necessity be a statute and possibly a constitutional amendment

change, thus bringing the merits of such a proposal to the debate of the Legislature and citizenry.

### 3. Comprehensive Economic Development Strategy.

(a) Applicable parts of the statute: WS 9-12-106(a)(i) "Develop a comprehensive economic development strategy for the state, starting the first year of each new gubernatorial administration, consistent with the provisions of this act"

(b) Comments:

(i) A comprehensive economic development strategy that takes all aspects of the state's economy into account, especially as a new Governor comes into office is certainly a reasonable requirement. It should be driven by the new Governor and be the roadmap bringing together the resources of all state agencies to accomplish what the new incumbent wants to make happen in the administration.

(ii) Governor Freudenthal has instituted a strategic planning methodology that is to result in a document that is readable by non-bureaucrats and be the basis for budgets and programs. Each state agency is working on theirs. The Governor's Planning Office is rightfully driving this transformation as this should be a reflection of the Governor's vision and strategy.

(iii) The Council is responsible for that portion of the state plan that is in the Wyoming Economic Development Act (WS Chapter 12)

(c) Recommendations:

(i) After coordination with the Governor, add the requirement to Title 9, Chapter 1, Article 2 the requirement for a comprehensive economic and social development strategy for the state when a new Governor takes office.

(ii) Change WS 9-12-106(a)(i) to, "Each year develop an operational strategic plan as part of the Governor's comprehensive economic and social development strategy."

### 4. Benchmarks.

(a) Applicable part of the statute, 1998 Session Laws, chapter 6, section 1,(d)(i) through (iii) as amended by 2003 Session Laws, chapter 8, section 2

(b) Comment: The Council staff to this point has concentrated on developing programs and have not done the requisite work to develop measures and data to show the effectiveness of the diverse programs. We have contracted to develop a client management system to keep track of and then report on the companies, communities and individuals we worked with.

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(c) Recommendations:

(i) The following should be the benchmarks:

(A) Jobs created/retained and capital investments that have been aided by state programs. This data should be garnered through surveys (surveys may not get all the requisite data, but they will provide primary information submitted by the business participating in the state sponsored program).

(B) Jobs created/retained and capital investment due to Challenge Loans.

(C) Jobs created/retained and capital investment due to Community Development Block Grants, Business Ready Community Grants and Loans, Community Facility Grants and Loans.

(ii) The following should be removed from the 1998 Session Laws, chapter 6, section 1, (d)(i) through (iii) as amended by the 2003 Session Laws, chapter 8, section 2.

Thank you again for your guidance during the June 20, 2005 meeting. I believe this letter does what you asked, namely identify things in statute that can facilitate economic development in Wyoming. The Council, my staff and I are committed to work with the Management Council and Legislature to continue the dialogue started at Thayne and fashion the best plan for Wyoming's economic development.

Sincerely,

Tucker Fagan  
Chief Executive Officer

TF: lsh

C: Rod Morrison, Co-Chair Wyoming Business Council  
Governor Freudenthal, Co-Chair Wyoming Business Council  
Wyoming Business Council

Attachments:

1. Attorney General Letter, March 9, 2001, subject, WBC Executive Agency Status
2. Attorney General Letter, December 14, 2001, subject, Ability to Take Equity Positions

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## **Attachments**

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The attachments to this letter are available at the Legislative Service Office, 213 Capitol, Cheyenne, Wyoming.