CHAPTER 5

Although a New Program, Administration of BRC Can Be Improved

BRC program is just over two years old.

Chapter summary

Due to its high profile and large appropriation, the Business Ready Communities (BRC) program requires special consideration in this evaluation. Despite its short existence (BRC was created only two years ago, in 2003), the program has lofty goals and has generated considerable attention and support. It aims to "promote economic development at the city, town and county level in order to create additional economic health and a stronger state economy." With $45 million appropriated to cover three fiscal years (FY '04 – '06), BRC accounts for the greatest portion of the monies for which WBC has responsibility.

Since only two of BRC's funded projects have been completed as of this writing, it is difficult to gauge even the short-term impact of the loan and grants awarded thus far. WBC board members and staff say it is unreasonable to expect defined results sooner than two to four years after a project is finished.

WBC can make adjustments to ensure success of the program.

Nevertheless, WBC needs to develop reasonable standards for prioritizing applications and for allocating BRC funds so they are available over a biennium. To prioritize, the WBC may need to go beyond the current ambiguous project review criteria, which make it unclear how the WBC objectively gauges each proposal's promised economic impact. Also, current project monitoring is primarily a financial accounting of funds. WBC monitoring plans are evolving, but still lack direction for post-construction follow-up to see if promises made in applications actually materialize. We believe WBC can make procedural adjustments in these areas to ensure the success and continued support of the program.

Business Ready Communities is a primary focus for WBC

Through the Community Infrastructure Program (W.S. 9-12-601 through 603), WBC can award BRC funds as grants and loans to

Legislature has appropriated $45 million to cover three fiscal years.

local communities (city/town and county governments and joint powers boards) to build infrastructure that enhances local ability to develop the economy. Following staff review and recommendation, the WBC board of directors recommends projects to the State Land and Investment Board (SLIB) for final approval; after this, projects can draw down BRC funds. The Legislature has approved three appropriations for BRC: $8.4 million in 2003, $25 million in 2004, and $11.6 million in 2005.

BRC is <u>the</u> "product" for WBC to sell.

BRC appears to dominate the other aspects of WBC operations. Perhaps because it comprises the greatest portion of WBC's budget, many local economic developers as well as current and former WBC board members perceive that it *is* the WBC. Staff have referred to it as "the product" for WBC to sell, one that is greatly contributing to economic development in the state. If BRC were cancelled or removed from WBC, some say this would greatly hinder the impact the WBC could have.

Three categories of BRC projects

BRC is structured to fund three levels of development in communities: Business Committed, Community Readiness, and Community Enhancement projects. BRC rules allow consideration of Business Committed projects at any board meeting throughout the year. Community Readiness and Community Enhancement projects are considered twice each year, in the spring and fall.

Figure 5.1

BRC Project Categories: Projects/Funds Awarded and Under Review
April 2004 through May 2005

Project Type	Number of Projects	BRC Funding	Percent of Projects	Percent of Total BRC Funds	Average BRC Cost per Project
Business Committed	12	$13,700,858	27.27%	31.08%	$1,141,738
Community Readiness	26	$29,134,828	59.09%	66.09%	$1,120,570
Community Enhancements	6	$1,250,339	13.64%	2.84%	$208,390
Total	**44**	**$44,086,025**	**100.00%**	**100.00%**	**$1,001,955**

Source: LSO analysis of WBC data.

Business Committed and Community Readiness projects require a five percent community match for projects costing up to $250,000, and a ten percent match for projects between $250,000 and $1,500,000. Community Enhancement grants require a fifty percent community match for grants up to $500,000. Figure 5.1 provides detail on BRC funds awarded.

BRC provides economic incentives

Wyoming lacks direct incentives to offer businesses for expansion or relocation.

Although Wyoming is considered a business-friendly state in that, for example, it has no corporate income tax, it has had few other direct incentives to offer businesses considering expansion or relocation in the state. BRC is intended to help local communities by providing funding for two purposes: first, to help communities build needed infrastructure, and second, for direct and indirect economic incentives.

BRC allows transfers of infrastructure to private business.

Factors influencing the evaluation of an economic incentive program differ from traditional grant and loan programs to local governments, such as the Mineral Royalty Grant (MRG) program administered by the Office of State Lands and Investments. For example, the MRG program does not anticipate the transfer of publicly-owned infrastructure to private business, something the BRC allows for.

State agency must take an active role in building accountability

According to NCSL, evaluating incentive programs is troublesome.

A report by the National Conference of State Legislatures (NCSL) on devising and evaluating economic incentive programs states that evaluating how well state economic development incentives work, assessing whether the benefits justify the costs, and holding beneficiaries of the incentives to their commitments, are troublesome issues in all states. Further, evaluations of incentive programs that measure success and use of resources are not common. This means a state development agency must take an active role in upholding the intent of a program in order to build in accountability, collect the needed information, and enforce agreements.

The Community Development Block Grant program served as the model for BRC

CDBG funding decisions do not go before SLIB for approval.

Since its formation, WBC has administered the federally funded Community Development Block Grant (CDBG) program. This program is similar to BRC in that it too provides economic incentives to local communities by offering grants and loans to assist in economic development. To some extent, WBC patterned its BRC start-up and rules after the CDBG program, although CDBG funding decisions differ in not going before the SLIB for final approval.

CDBG sets specific objectives that communities must meet to receive funds

The primary goal of the CDBG program with respect to economic development is to "provide for the creation and retention of permanent primary jobs that are above the average wage and aid in the diversification of the Wyoming economy." This goal is similar to, though more specific than, the goal of BRC: "…to improve economic health and [promote] a stronger state economy."

The CDBG program offers reasonable and precise standards that guide the WBC in fulfilling program goals; one example of a well-defined CDBG objective is that activities must benefit low to moderate income populations. The program also requires that applicants define such aspects as the type and amount of jobs to be created, that the applicant is unable to finance the development activity on its own, and that other funding sources are not available. Additional criteria, such as private sector investment and historic value, can also influence funding decisions.

The success of economic incentive programs requires planning, disclosure, measurement, and monitoring

Article XVI, Section 6 of the Wyoming Constitution (see excerpt at left) complicates decisions about when incentives such as BRC grant funds may benefit private business. WBC requested guidance from the Attorney General, who stated that the provision is intended to prevent government from "subsidizing special interests." Evidencing a similar concern, CDBG guidelines stipulate the need to ensure that its program does not unreasonably raise the equity of a private business.

NCSL recommends making incentives contingent upon measurable performance.

To help cope with these and other issues such as fairness, NCSL recommends improving disclosure of economic incentive terms and packages, and coordinating (planning) incentive programs. In addition, it recommends making incentives contingent upon measurable performance by the recipient. However, performance outcomes can only be validated by consistent monitoring that continues past facility construction.

Figure 5.2

BRC Awards by Region: Projects/Funds Awarded and Under Review
April 2004 through May 2005

Region	Projects	Committed BRC Funds	Percent of Total Projects	Percent of Total BRC Funds	Average BRC Cost per project
1) Fremont, Sublette, Teton	6	$6,472,324	13.64%	15%	$1,078,721
2) Park, Bighorn, Hot Springs, Washakie	6	$5,320,941	13.64%	12%	$886,824
3) Natrona, Converse, Platte, Niobrara	5	$3,934,602	11.36%	9%	$786,920
4) Laramie, Carbon, Albany, Goshen	10	$7,993,516	22.73%	18%	$799,352
5) Sweetwater, Lincoln, Uinta	8	$12,422,865	18.18%	28%	$1,552,858[1]
6) Campbell, Sheridan, Johnson, Crook, Weston	9	$7,941,777	20.45%	18%	$882,420
Total	**44**	**$44,086,025**	**100.00%**	**100%**	**$1,001,955**

Source: LSO analysis of WBC data.

[1] The average BRC cost per project in Region 5 is above the single grant maximum due to several multi-phased projects.

WBC has quickly committed BRC funds without sufficient project prioritization

The first BRC projects were approved in April 2004 and after a little more than one year, WBC has committed over $32.9 million for 34 projects and is reviewing another 10 projects with requests for $12.2 million. Although appropriations were intended to cover the program through FY '06, it is likely the WBC will commit all BRC appropriated funds by the fall of 2005. Figure 5.2 shows the distribution of BRC funds to the six WBC regions.

WBC does not allocate funds to cover all proposed funding cycles.

WBC has not adopted rules or procedures to limit the amount of funding awarded each quarter, or to give priority to certain types of projects throughout the entire biennium. Since WBC says Business Committed projects are the highest priority, it is counter-productive not to have funding available for these projects later in the biennium. In essence, the program has been administered as a first come, first served funding source, where any project that meets application standards will be recommended.

Some development may be stalled for lack of BRC funding in FY '06.

Because of these circumstances and as a result of the rapid commitment of BRC funds, WBC cannot ensure that those applicants who submit proposals during the remainder of FY '06 will have the same ability to pursue development projects as previous applicants. Also, this may potentially stall development in communities trying to obtain BRC funds, especially in those that have yet to receive funds.

WBC maintains statute does not require prioritization of projects.

For example, since WBC has not set aside a portion of the funds to cover later time periods (as the SLIB does with Mineral Royalty Grants), all program funds will have been spoken for and WBC will not be able to fund projects under the Business Committed category of BRC for the remainder of FY '06. Although officials have stated their intent to prioritize BRC projects during the current funding cycle, WBC has not issued policies or guidelines showing how it will occur across project categories. According to staff, thus far they have had the luxury of substantial funding for the program and statute does not require the agency to prioritize projects.

Almost all BRC funds have been awarded as grants

WBC says loans are "superfluous" to the program.

Although the BRC program was set up to be both a grant and loan program, at present the WBC considers loans to be "superfluous" to the program. By statute, BRC allows for loans to be at no or low interest and WBC has discretion in the terms to be applied. Of the awards already made or under review, 99.8 percent of funding is in the form of grants; only one loan for $100,000 has been approved.

Statute and WBC policy do not encourage all or partial loan funding for projects.

Several conditions in statute, along with WBC policy, are the likely reasons for this disparity in amounts. First, statute requires loans to be reviewed by the Attorney General to certify the legality of transactions. Second, loans must be "adequately collateralized" by the government entity applying for the loan, and a community may need to hold an election to approve borrowing. Third, by WBC policy, BRC is administered so communities, not the state, decide how to fund projects; thus, WBC has no reason to recommend applications as all or partial loans rather than grants.

The SLIB raised questions about the low use of loans and lack of BRC recapture provisions

According to BRC rules, loans may be used when the funded infrastructure is a revenue-generating facility. Several projects currently awarded grants fall into this revenue-generating category, but the WBC has yet to suggest loans as part of any award. At a recent meeting the SLIB raised the issue of whether the BRC has, or should have, provisions for recapturing funds. The purpose of recapture would be so WBC can extend the use of its appropriation. With the exception of the one loan, WBC is not recapturing funds at the state level, in the BRC program, for re-distribution toward future projects.

Attorney General has suggested three basic criteria exist for initially evaluating the legality of BRC transactions:

A. A public purpose must exist.
B. Adequate consideration must be exchanged.
C. Statutory authority must exist.

Similarly, WBC has received guidance from the Attorney General's Office that when funding projects which benefit private business, the state must receive "adequate consideration" so as not to violate Article XVI, Section 6 of the Wyoming Constitution. However, "adequate consideration" does not mean that loans are the only way to meet this requirement, and it is case-specific as to whether this condition has been met. The Attorney General also noted the Wyoming Supreme Court has yet to rule on the public purpose of economic development, what types of consideration may be used regarding BRC projects, or future infrastructure transfer deals with businesses.

WBC uses nominal review criteria when evaluating applications

According to BRC rules, only Business Committed projects must demonstrate that actual primary jobs will be created or retained as the result of a BRC award. In order to gauge these projects' impacts on the community, the WBC runs an economic impact computer model to define projections for such aspects as jobs created, business revenue, and taxes. However, Business Committed projects comprise only about one-fourth of all projects and less than one-third of BRC funds awarded. The other project categories, Community Readiness and Community Enhancement, are not required to meet defined job targets and their link to economic development is not certain.

WBC project evaluation and criteria remain unclear and subjective.

Application materials for the BRC program seem logical to determining the economic development potential of projects and are similar to those required for CDBG. Yet aside from identifying "emerging themes" of the program (summarizing who has applied), it is unclear what WBC "due diligence" entails when evaluating projects as to their proposed impacts on economic development. The CDBG process scores specific factors and, for example, allows a downtown development project to be rated higher to the extent it has twenty-five percent or more matching financial support. Also, CDBG guidelines gauge the ratio of jobs created to the amount of money awarded: if a project costs more than $50,000 per job created, the project is considered as not providing sufficient public benefit.

Substantiating project prioritization may be difficult without clear criteria.

Although WBC used the CDBG program as a template for the BRC program, it is unclear why some evaluative aspects of the CDBG program were not adopted. BRC review criteria need not duplicate CDBG, but we note that several concerns about measurement and evaluation of BRC applications were raised during the rule-making process. WBC responded by stating it would make no changes to the rules and would handle these concerns administratively. If WBC develops standards for prioritizing projects without also issuing clear criteria for reviewing those projects, it may have difficulty justifying decisions to approve or deny once funding shortfalls occur, as is anticipated to occur later in FY '06.

WBC selectively applies some project standards

WBC has recently suggested that one Business Committed project incorporate the state Family Economic Self-Sufficiency Standard, but it has not made similar requirements of other Business Committed or Community Readiness projects. According to NCSL, business specific incentives can invite charges of favoritism from the public and other firms that do not receive the incentives or comparable terms. By not applying consistent and clear standards to all projects, or at least within each project category, WBC risks not funding projects that better meet the program's objectives. It also risks funding projects for which other avenues of funding may be available or more appropriate.

Confusion exists as to what makes WBC recommendations on BRC projects "business decisions."

WBC states that its BRC funding recommendations are "business decisions," although this term has not been defined. We found a lack of agreement among the board members as to whether these are true business decisions. One member said that if BRC recommendations were truly business decisions, the banks would be funding these projects. WBC staff indicate the WBC should only come in with assistance for businesses when private financing is not available.

Must WBC approve all projects?

Statute maintains WBC need only

Several WBC board members mentioned a concern that nothing in the BRC statute or rules allows them to deny funding to applicants. WBC belief has been that as long as project proposals meet the application standards, it is obliged to recommend those projects to

"consider" completed applications.

SLIB. However, BRC statute only indicates "[a]ll complete applications…shall be *considered* by the council (emphasis added)." In addition, we believe WBC staff could apply more rigor to the application review process; for example, by making use of some CDBG program standards, staff can help the board better ascertain the effectiveness and financial efficiency of proposed BRC projects.

Monitoring for BRC is developing

Since the program is so new, few projects have been completed and little monitoring has occurred. BRC rules only require recipients to submit quarterly progress reports and a final comprehensive report, upon completion of project construction. However, we found considerable variation in how and to what depth recipients fill out these reports. Also, WBC still lacks a timeframe and process for further follow-up beyond construction, especially for Community Readiness and Enhancement projects.

BRC monitoring is response-driven, not proactive and consistent.

Several WBC staff and board members said there is an intention to monitor projects beyond the construction phase, but they indicated concern that this would take substantial staff time and other resources. So far, monitoring consists of identifying additional services a community may need to market their new facilities, and relating "success stories" to would-be applicants. Although anecdotal references may be helpful in illustrating aspects of the program's effectiveness, this response-driven approach to monitoring falls short of linking application promises to actual results. If WBC does at some point develop a more defined monitoring approach, projects funded later may face greater scrutiny and reporting requirements than the projects already funded.

The BRC program stipulates (through rules that require actual and potential primary job formation) and application materials imply (by requesting projections and promises) that further follow-up is needed, beyond facility construction, to see if economic development on the scale promised has materialized. Verification of such projections can help strengthen those anecdotal "success stories." Also, in light of concerns raised by the Attorney General, more follow-up may be required in the future to judge whether "adequate consideration" was exchanged upon approval of a

Business Committed project.

Other states use provisions to assure promised results.

Without a fully-developed monitoring plan, WBC has no recourse if funded proposals do not meet projections. Other states use provisions such as rescission (cancellation of agreement for non-performance) and clawback (recovery of all or part of funds when performance does not meet promises) to further guarantee delivery of promised results. WBC has another example to follow in the CDBG program, which offers a convertible loan option ("recalibration," according to NCSL). This process allows a loan to be forgiven (converted to a grant) if expectations such as job growth over specified periods of time are met.

Recommendation: The WBC should develop BRC project review, prioritization, and monitoring procedures that ensure fairness and transparency for applicants.

Current program implementation requires ample, indeterminate appropriations.

The BRC program is too new to assess its true impact, either short- or long-term. WBC says that its current approach is "defining the demand for the program," yet this approach gives no assurance for the remainder of FY '06, or for any future year, that adequate funding will be available to meet that demand. Unless the Legislature approves ample funding to cover all project proposals at every point, WBC will not be able to give fair and equal consideration to equally high-value projects within a funding cycle. Moreover, for lack of program funding, projects with high anticipated returns on investment (in terms of job creation, capital investment, etc.) may be delayed or not come to fruition.

WBC needs to be more deliberate in

Statute charges WBC with administering its funds with "prudence, discretion, and [judgment]." We believe WBC needs to more fully develop BRC procedures for reviewing and prioritizing projects and monitoring results. It also needs to ensure that these procedures are

funding, evaluating, and monitoring projects.

as fair and transparent as possible, and consistently applied to all applications and funded projects. Since BRC is considered to be pivotal in meeting statewide economic development goals, it will be to WBC's benefit to be more deliberate in its allocation of funds, evaluation of projects, and monitoring of results.

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