

Report to the Colorado General Assembly:

RECOMMENDATIONS FOR 1988

ECONOMIC DEVELOPMENT



COLORADO LEGISLATIVE COUNCIL

**RESEARCH PUBLICATION NO. 313
December, 1987**

LEGISLATIVE COUNCIL
OF THE
COLORADO GENERAL ASSEMBLY

Senators

Sen. Ted L. Strickland,
Chairman
Sen. Wayne Allard
Sen. Jana Mendez
Sen. Harold McCormick
Sen. Ray Peterson
Sen. Ray Powers
Sen. Jeff Wells

Representatives

Rep. Carl B. "Bev" Bledsoe,
Vice Chairman
Rep. Vickie Armstrong
Rep. Charles Berry
Rep. Chris Paulson
Rep. Gilbert Romero
Rep. Paul Schauer
Rep. Ruth Wright

* * * * *

The fourteen-member Legislative Council serves as the fact-finding and information-collecting agency of the General Assembly. The Speaker of the House and the Majority Leader of the Senate serve ex officio with twelve appointed legislators -- six senators and six representatives.

Between sessions, the interim legislative committees concentrate on specific study assignments approved by resolution of the General Assembly or directed by the council. Committee documents, data, and reports are prepared with the aid of the council's professional staff.

During sessions, the council staff provides support services to the various committees of reference and furnishes individual legislators with facts, figures, arguments, and alternatives.

COLORADO LEGISLATIVE COUNCIL
RECOMMENDATIONS FOR 1988

COMMITTEE ON ECONOMIC DEVELOPMENT

Legislative Council
Report to the
Colorado General Assembly

Research Publication No. 313
December, 1987

COLORADO GENERAL ASSEMBLY

OFFICERS

Sen. Ted L. Strickland
Chairman
Rep. Carl B. "Bev" Bledsoe
Vice Chairman

STAFF

Charles S. Brown
Director
David Hite
Assistant Director



LEGISLATIVE COUNCIL

ROOM 029 STATE CAPITOL
DENVER, COLORADO 80203-1784
(303) 866-3521

Members

Sen. Wayne Allard
Sen. Harold McCormick
Sen. Jana Mendez
Sen. Ray Peterson
Sen. Ray Powers
Sen. Jeffrey Wells
Rep. Vickie Armstrong
Rep. Charles Berry
Rep. Chris Paulson
Rep. Gilbert Romero
Rep. Paul Schauer
Rep. Ruth Wright

To Members of the Fifty-sixth Colorado General Assembly:

Submitted herewith is the final report of the Committee on Economic Development. The committee was appointed by the Legislative Council pursuant to House Joint Resolution No. 1032, 1987 session.

At its meeting on November 18, the Legislative Council reviewed the committee's recommendations. A motion to forward the report and recommendations of the Committee on Economic Development, as contained in this report, to the Fifty-sixth General Assembly was also approved.

Respectfully submitted,

/s/ Senator Ted Strickland
Chairman, Colorado Legislative
Council

TS/pn

TABLE OF CONTENTS

	<u>Page</u>
LETTER OF TRANSMITTAL	iii
TABLE OF CONTENTS	v
LIST OF BILLS AND RESOLUTION	viii
SUMMARY OF RECOMMENDATIONS	3
Committee Recommendations	4
BACKGROUND REPORT	9
Part I	10
Section A: Government and Nonprofit Commercial Activities and Privatization	10
Commercial Activities of Government and Nonprofit Organizations	10
Government Commercial Activities	10
Commercial Activities of Nonprofit Organizations	12
Privatization	15
Proponents of Government Provision	17
Proponents of Private Provision	17
Other Considerations	18
Privatization Cost-Benefit Findings	19
Conclusion -- Privatization	20
Section B: Venture capital	21
Financial Capital in the Economy	21
Characteristics of Venture Capital	21
Structure of Venture Capital Industries	22
Trends in Venture Capital Availability	23

Capital Market Imperfections	24
Public Policy Issues	26
Venture Capital -- Conclusions	28
Section C: Kansas Economic Development Program	29
Characteristics of the Kansas Process	29
Selected Kansas Programs	31
Part II	32
Economic Development: The 1930s to the Present	32
Global Economic Change	33
Economic Development: Beyond Industrial Recruitment ..	34
Education and Training	35
Education as Investment	36
Description of Other State Powers	37
State Regulatory Powers	38
State Resources and Perspectives	38
Part III	42
Economic Development -- State of Colorado	42
Recent Initiatives, Current Programs, and Future Directions	42
The Private Sector	42
Colorado General Assembly, 1982-1987	44
Executive Branch Programs	48
Current Economic Development Programs	51
Department of Local Affairs	51
Office of the Governor	53

Department of Higher Education	54
Department of Agriculture	55
Department of Labor and Employment	56
Office of Regulatory Reform	56
Colorado Housing and Finance Authority	57
Capital Construction and Development Finance	58
Quasi-Governmental Development Authorities	59
Local Government Development Finance	59
Endnotes	61
Bills 1 through 12	63
Committee Resolution A	139

LIST OF BILLS AND RESOLUTIONS

	<u>Page</u>
Bill 1 -- Concerning State Government Competition with Private Enterprise	63
Bill 2 -- Concerning State Agency Rule-Making Procedures	77
Bill 3 -- Concerning the Procurement Advisory Council and Making an Appropriation in Connection Therewith	85
Bill 4 -- Concerning the Division of Correctional Industries	89
Bill 5 -- Concerning the Maintenance by Governmental Entities of Records Relating to Costs for Goods and Services	93
Bill 6 -- Concerning Vendor Access to Contracts Under the "Colorado Medical Assistance Act"	95
Bill 7 -- Concerning the Creation of Data Base Relating to Economic Development	97
Bill 8 -- Concerning the Activities of Financial Institutions	99
Bill 9 -- Concerning the Creation of the Colorado Strategic Seed Fund, and Making an Appropriation in Connection Therewith	109
Bill 10 -- Concerning Letters of Credit	117
Bill 11 -- Concerning the Establishment of an Income Tax Credit for Research and Development Activities in Enterprise Zones	119
Bill 12 -- Concerning the Establishment of Small Business Development Credit Corporations for the Purpose of Facilitating the Economic Development of Small Businesses, and, in Connection Therewith, Providing for the Licensure of Such Credit Corporations ...	123
Resolution A -- Concerning State Participation in a Mortgage Buydown Program in Conjunction with the Colorado Housing and Finance Authority.....	139

LEGISLATIVE COUNCIL
COMMITTEE ON ECONOMIC DEVELOPMENT

Members of the Committee

Sen. Les Fowler, Chairman	Rep. Ken Chlouber
Rep. Chuck Berry, Vice-Chairman	Rep. Renny Fagan
Sen. Wayne Allard	Rep. Faye Fleming
Sen. Terry Considine	Rep. Pat Grant
Sen. Jack Fenlon	Rep. Tony Hernandez
Sen. Robert Pastore	Rep. Tom Ratterree
Sen. James Rizzuto	Rep. Peggy Reeves
	Rep. Paul Schauer
	Rep. Wilma Webb
	Rep. Kathi Williams

Legislative
Council Staff

William Goosmann
Research Associate

Legislative Drafting
Office Staff

Kent Singer Senior Staff Attorney	Diane Eret Staff Attorney
--------------------------------------	------------------------------

SUMMARY OF RECOMMENDATIONS

The interim Committee on Economic Development was created by House Joint Resolution 1032 during the 1987 session to investigate the following areas:

- (a) A review of the state of Colorado's long-term role in economic development;
- (b) An evaluation of the possibility of establishing programs to provide money for new industries or the expansion of current industries;
- (c) An investigation of the methods of establishing public-private cooperation between institutions of higher education, particularly through the Colorado Advanced Technology Institute, including the new international center for science and technology, pending authorization under House Bill 1364 of this General Assembly;
- (d) A study of statutes and rules and regulations to:
 - 1) Eliminate unnecessary requirements and streamline procedures; and
 - 2) Determine the advisability of restricting governmental competition with the private sector;
- (e) A determination of whether government is competing unnecessarily and unfairly with the private sector;
- (f) An examination of the feasibility of privatization of government services; and
- (g) An evaluation of whether the state's procurement process provides an opportunity for participation by small independent businesses.

The committee met seven times to complete its charge. The committee's activity involved extensive testimony from state agencies, the Governor's Office, private interests, and local governments involved with economic development. These discussions revealed that Colorado possesses, in one form or another, many of the programs that are currently considered necessary for a successful overall economic development effort. A discussion of the issues raised and a review of existing programs and recent state activities in economic development is found in the final section of this report. Meetings were also devoted to: commercial activities conducted by government agencies and tax-exempt organizations which affect the private sector; state

government procurement practices; and privatization of government services; the role of venture capital in the economy; and discussions with participants in Kansas' recent economic development efforts. Each of these areas is examined in more detail.

Committee Recommendations

The Committee on Economic Development recommends 12 bills and one resolution. Each measure is briefly summarized below. Since several of the recommendations concern the issue of privatization and government competition with private enterprise, those bills are grouped together and presented first. The remaining bills cover a wide variety of topics.

Bill 1 prohibits state agencies from competing with private enterprise in the provision of goods and services unless specifically authorized in statute. Exempted agencies include Correctional Industries, Colorado Tourism Board, the Department of Public Safety, and state transportation systems, as well as medical services for the indigent. The Colorado Commission on Higher Education is instructed to adopt separate procedures for the review of complaints of unfair competition involving the state's colleges and universities. Commercial activities are prohibited except where the activity "offers valuable educational or research experience for students ... or fulfills the public service mission of the institution".

The bill creates a 15-member, state-level Private Enterprise Review Board to investigate: (1) complaints by private enterprise of unfair competition from government agencies and nonprofit organizations, and (2) opportunities for privatization of government services. Public hearings are to be held regarding complaints and the board is to report its findings and recommendations to the Joint Budget Committee, Executive Director of the Department of Revenue, State Auditor, and the Governor.

Any business that wishes to supply goods or services to the state is to submit a proposal to the Office of Regulatory Reform (ORR). The proposal is submitted to the affected agency which conducts an analysis of the proposal. The findings are then sent to the business and the Department of Local Affairs (DOLA). DOLA, with ORR, review the analysis and make recommendations to the Joint Budget Committee.

The purpose of the bill is to reduce the impact that government commercial activities have on markets for goods and services that can be met by the private sector. In large measure, this bill is based on an Arizona statute enacted in 1981 (House Bill 2148).

Bill 2 requires the inclusion of a cost-benefit analysis under proposed state agency rule-making procedures. Such analyses are to include descriptions of affected parties, estimates of probable costs and benefits, short- and long-term consequences, and investigations of

alternatives. Specific rule review and recordkeeping procedures are also mandated.

Each rule-making agency is required to keep a list of persons who request notification of proposed rules, and notices are to be mailed to those persons concerning proposed rules. Public hearings are to be held where interested persons may submit written testimony. The agency is to make information available on proposed rules or rule changes, including fiscal impact statements, prior to such meetings. No rule may be adopted unless: (1) there is a demonstrated need; (2) the proper statutory authority exists; (3) the rule has been clearly stated; (4) there are not conflicts with other provisions of law; and (5) possible duplication and overlap have been adequately explained.

The purposes of the bill are to increase the awareness within state agencies of the impact that state rules and regulations have on the state's business environment and to improve communication between state rule-making agencies and affected parties.

Bill 3 expands the membership of the Procurement Advisory Council from seven to eleven and mandates that five members be business owners from firms with employees numbering between 1-20, 21-50, 51-100, and more than 100. The council is to meet three times annually.

The council is also charged with studying issues such as: small business access to the state procurement process; the number, size, and types of businesses participating in state procurement contracts; the feasibility of publishing a "business opportunity bulletin" of goods and services needed by state agencies; problems within the procurement process (e.g., time limits, bonding requirements, contract specifications); and additional goods and services that can be provided by private enterprise.

The original advisory council was created "for the discussion of problems and the making of recommendations, such as on proposed rules." Bill 3 states that the council is to "develop recommendations for the enhancement of opportunities to make purchases from Colorado businesses and to identify ways to purchase goods and services in the most cost-efficient manner."

Committee testimony revealed concerns on the part of small- and medium-sized businesses regarding difficulties participating in the state's procurement process. In the opinion of the Colorado Coalition for Fair Competition, increasing the access of smaller businesses to state contracts would increase competition for those contracts. This competition would drive down the price which the state pays for the goods and services it purchases from the private sector. According to the coalition, a one percent decrease in the prices paid during fiscal year 1985-86 would have resulted in a \$3 million savings for the state.

An informal survey conducted by the coalition related small business problems with an understanding of the state procurement

process and the paperwork required, and difficulties in identifying the purchasing needs of the state. Because larger companies may have more experience with state procurement, smaller firms are put at a competitive disadvantage. Improved information about the process and less cumbersome procedures should assist smaller companies.

Bill 4 changes the membership of the Correctional Industries (CI) Advisory Committee to include members from businesses affected by CI activities and products; authorizes the director of the Division of Correctional Industries to develop private sector distribution networks for its products; deletes the mandate that state agencies purchase CI products (if they are of comparable price and quality); and mandates economic impact analyses of proposed Correctional Industries venture agreements.

The purposes of the bill are to: (1) increase the ability of private sector firms to compete with CI-produced goods and services destined for state agencies; and (2) enhance the awareness of CI concerning the impact of their operations on private enterprise.

Bill 5 provides for the collection of information concerning the unit cost of state agency goods and services in contracts worth more than \$50,000. Such information should improve the ability of state government and the private sector to determine whether goods and services could be more cheaply provided by private enterprise.

Bill 6 prohibits the Department of Social Services from excluding vendors from contracting with the department for the provision of medical services under the act if the vendor(s) meets the bid conditions. The bill is intended to increase access to state medical services contracts by allowing multiple contractors.

Bill 7 designates the library located at the Auraria campus as the site of the state's economic development data base. The data base is designed to contain "useful and relevant" information that will "assist the creation, expansion, and relocation of business in Colorado." It is intended to interact with the Metro Denver Network created by the Greater Denver Chamber of Commerce. Plans are to expand access to the system statewide.

Bill 8 establishes a series of dates for the gradual movement of the state's financial institutions toward interstate banking. In chronological order, the bill provides that:

- prior to January 1, 1989, in-state and regional financial institutions may acquire each other;

- beginning January 1, 1989, in-state financial institutions may acquire financial institutions in states with reciprocal banking agreements and, within limits, reciprocal state institutions may acquire in-state institutions;
- beginning July 1, 1991, in-state financial institutions may acquire any out-of-state financial institution and, within limits, any out-of-state financial institution may acquire an in-state institution.

The board of directors of any in-state financial institution may adopt a resolution prior to July 1, 1988, to exempt that institution from the provisions of this bill.

Branch banking is also authorized beginning in January 1, 1989, if the branch is a failed bank subject to liquidation, dissolution, or reorganization. However, the branch may not be operated within 2,500 feet of another bank. After July 1, 1991, any bank may operate a branch facility if it is 2,500 feet beyond an existing bank.

Bill 9 creates a seed capital fund under the auspices of the Colorado Housing and Finance Authority (CHFA) "to meet the special needs of entrepreneurs and small business operators in Colorado who would not otherwise be able to obtain funding." The fund is designed to leverage private investment funds in order to assist firms at the initial stage of product development. It is to be capitalized by annual appropriations from the General Assembly.

The bill defines the investment objectives of the fund and the characteristics of firms at the seed capital stage of growth. These parameters are used to guide the activities of a seven-member Colorado Strategic Seed Fund Council which oversees and supervises the operations and investments of the fund in consultation with CHFA. The council is composed of a member of the General Assembly, a management consultant, an institutional investor, and four persons skilled in venture capital.

Venture capital financing prefers business proposals from firms that have a significant chance at high rates of growth based on a new product or prototype. High rates of return are needed to offset the risks involved. Seed financing is intended for firms at the earliest stages of development (e.g., they may only have an idea for a product). The risks involved with either type of lending are normally too great for traditional lending institutions. Though an appropriation is not specified in the bill, discussion with Duane Pearsall, Chairman, Colorado Association of Commerce and Industry, revealed that \$2.5 million was contemplated. State participation is desired because a fund of this size normally will not support the proper management needed to operate the fund.

Bill 10 clarifies the statutory provisions related to financial institutions' letters of credit in situations where Colorado law is silent.

Bill 11 creates an income tax credit equal to 6.5 percent of the value of research and development activities conducted within the state's enterprise zones that exceed expenditures in prior years. An annual cap on the credit is specified. The bill is intended to stimulate research and development activities in the state.

Bill 12 establishes licensing and other procedures under the guidance and authority of the Executive Director of the Department of Regulatory Agencies for the creation of small business development credit corporations (SBDDC). SBDDCs are designed to enhance small business access to financial and management assistance by providing an organizational form through which investors may diversify the risks associated with investing in small- and medium-sized businesses.

An SBDDC may incur indebtedness (borrow funds, and issue bonds, debentures, notes), enter into contracts, hold mortgages and leases, and invest its available funds. It may not, however, engage in any other activities than those specified in the bill. The corporation determines the form and terms of its participation in its portfolio companies (e.g., loans, equity -- common and preferred stock, stock options, royalties). Companies must be located in Colorado. Under most circumstances, the corporation may not hold a controlling interest in its portfolio companies for more than five years. Fees are to be established to cover the bill's direct and indirect administrative costs.

Committee Resolution A recommends that the Colorado General Assembly appropriate \$5 million to capitalize a revolving fund within the Division of Housing (Department of Local Affairs). The moneys would be used to buy the difference between the purchase price of repossessed housing held by financial institutions and that affordable by low-income buyers. This program is also known as gap financing or mortgage buydown. The bulk of the purchase price would be financed with tax-exempt bonds from CHFA.

The purpose of the bill is to make low-income housing available at a fraction of probable construction costs and to assist the state's financial institutions by decreasing the number of properties held.

BACKGROUND REPORT

Issues encompassed by economic development offers evidence of why it has dominated public policy discussions in recent years. The topic directly or indirectly affects almost every program or activity of government. These different issues are the subject of this background report.

PART I is divided into three sections, each including committee discussions as well as other background materials.

Section A explores the topics of commercial activities of government agencies and nonprofit, tax-exempt organizations that affect the private sector, and privatization.

Section B considers the characteristics of venture capital and its place in economic development.

Section C examines the process and product of a two-year economic development program begun by Kansas in 1986.

PART II explores the evolution of economic development thinking that has lead to a restructuring of state programs due to a reorientation of their goals. Major topics include education, infrastructure, and the state's role in economic development.

PART III examines recent economic development efforts in Colorado by private sector interests, the General Assembly, and the executive branch. This section also documents existing state programs related to economic development.

PART I

Section A: Government and Nonprofit Commercial Activities and Privatization

Concerns with the commercial operations of government agencies and nonprofit organizations involve issues of efficiency and equity. This is true of privatization as well.

In certain instances, government agencies produce goods and offer services that are available from the private sector. Private sector interests argue against these practices for two reasons. First, since governments are not subject to the same competitive forces as the private sector, they lack the required incentives to produce efficiently. This implies that the goods and services produced by government cost more than they would if provided by private enterprise. Second, since private firms pay a variety of fees and taxes that public agencies and nonprofit organizations do not, goods and services offered by government agencies represent lost private sector business activity and, therefore, lost government revenue.

Commercial Activities of Government and Nonprofit Organizations

The emergence of the issue of "unfair competition" by government agencies and nonprofit organizations can be traced, in part, to the final recommendations of the 1986 White House Conference on Small Business. Of the 60 issues published in the conference's final report, government and nonprofit competition with the private sector ranked third (behind the cost of liability insurance and government-mandated employee benefit programs). Another reason for the emergence of the issue of unfair competition is a perceived increased reliance by tax-exempt groups on commercial operations to support their nonprofit activities. Each of these areas are examined below.

Government Commercial Activities

Concerning government commercial activities, the text of the White House report reads as follows:

Because government at all levels has failed to protect small businesses from damaging levels of unfair competition, federal, state and local laws, regulations and policies should ... prohibit direct, government-created competition in which government organizations perform commercial services. 1/

The report recommends that laws be enacted at all levels of government to require "strict" reliance on the private sector for performance of commercial functions. It recommended that a private enterprise review committee be established to review government practices that compete with small business. (In contrast to the White House Conference recommendations, it should be noted that the Institute for Enterprise Advancement published survey results in 1986 which reported that, of 75 potential problem areas surveyed, competition from government or nonprofit organizations ranked 70. 2/)

Major areas of concern expressed to the committee involved goods and services offered by the state's university system (books and computers to non-students, hearing aids, conference facilities, and private research activities conducted in university buildings) and various goods produced by the Colorado Division of Correctional Industries (CI). The contention is that subsidized overhead and reduced labor costs provide these agencies with competitive advantages that allow them to sell goods and services at prices below those of private vendors.

An additional complaint against CI is the exclusive nature of its contracts with state agencies. Current Colorado law mandates that all state agencies in need of items similar to those produced by CI must purchase those items from CI, unless they are not of comparable price or quality or cannot be delivered within a reasonable time (Section 17-24-111, C.R.S.). This provision effectively prevents private sector firms from bidding on state contracts for those items produced by CI.

Lack of information prevented the committee from determining the validity of such complaints and no evidence was presented indicating the extent or impact of these operations on private business. One specific example concerned the sale of hearing aids by Colorado State University. One hearing aid dealer in Fort Collins testified that his business has declined markedly in the last ten years. However, subsequent questioning failed to determine whether this loss was due to university competition, general economic conditions, or the fact that four other private dealers had opened in the last ten years.

Concern was expressed by committee members that, in the case of CI and the universities, participants would be denied a valuable learning experience if the programs were discontinued. Regarding hearing aids, such experience is not necessary for students to gain professional certification. However, public policy may be compelling for the employment of prisoners in activities that would be potentially useful upon their release. While acknowledging these public policy issues, opponents contend that certain restrictions should still apply. Another issue involves access to such public hearing aid services by those unable to afford devices offered by private firms. According to Kirby Garrett, State Director, National Federation of Independent Business-Arizona, similar concerns were expressed about the legislation in Arizona at its inception. However,

opposition has diminished as the language of the law has been refined and the workings of the law are better understood.

Commercial Activities of Nonprofit Organizations

Language from the White House report relating to the activities of tax-exempt organizations stated:

... federal, state and local laws, regulations and policies should ... prohibit unfair competition in which non-profit tax-exempt organizations use their tax-exempt status and other advantages in selling products and services also offered by small businesses. 1/

Various interests of the business community are concerned about the increasing number of tax-exempt entities and their expanded use of income-generating operations. For-profit firms claim that nonprofit agencies are increasingly using their tax-exempt status to "shelter" from taxes what are essentially taxable business operations. This tax-exempt status confers an unfair competitive advantage for these agencies over for-profit firms engaged in the same or similar industries. Also, as with government competition, business conducted by nonprofit organizations represents lost tax revenues.

In general, all organizations qualifying under section 501 (c) of the federal Internal Revenue Code (IRC) are not subject to federal and state income taxes, and various local taxes. However, the code was amended in 1950 to impose federal income tax on commercial and other income-generating activities that are regularly carried out by the organization but which are not substantially related to its tax-exempt status. This is known as the unrelated business income tax (UBIT; Revenue Act of 1950, Ch. 994; sections 511 - 514, IRC). Materials prepared by the Congressional Research Service state that these provisions "sought to correct the unfair competition resulting from tax-exempt organizations using tax-free profits to expand their businesses while others paid taxes." 3/

Subsequent changes in the law and various Internal Revenue Service (IRS) rulings have attempted to refine such concepts as "unrelated business", "regularly", and "substantial". However, no definitive rules exist to determine the relevance of a particular activity. In most instances, the nature of and circumstances surrounding the organization and the particular activity continue to determine whether it is subject to UBIT or not. This uncertainty has led to a large number of exceptions and qualifications and, overall, to difficulty in administering UBIT provisions.

Because of these complaints and the fact that tax-exempt status is a federal designation, hearings were held in June, 1987, to review the income-producing activities of nonprofit organizations by the Subcommittee on Oversight, House Committee on Ways and Means, of the

United States House of Representatives. Its findings and final recommendations were not available at the time of this report.

Though the complaints of the business sector have been most prominent in the UBIT debate, the issue of competition is not one-sided. A summary of the views of each side are provided by a recent United States General Accounting Office (GAO) report. The business viewpoint is stated below.

Representatives of taxable businesses believe that the income-producing or commercial activity of tax-exempt organizations exceeds the traditional role of these organizations, and that these organizations are afforded a competitive advantage by virtue of their tax-exempt status and other benefits. 4/

Competitive advantages include exemption from income taxes, use of tax-exempt facilities or facilities constructed and maintained with public funds, and reduced mail rates. Specific examples of competition include research and analytical services offered by universities, humane societies offering veterinary services to the public on a fee-for-service basis, and educational and religious organizations offering travel packages to the general public. The taxed business community contends that current language and enforcement of UBIT statutes are not adequate to prevent unfair competition.

The views of the non-profit organizations are summarized as follows:

Representatives of tax-exempt organizations, on the other hand, believe that their income-producing or commercial activity furthers their exempt purposes and is important to generate needed additional revenue to fund their activities. Further, they believe that competition is the result of taxable businesses increasingly entering traditional tax-exempt activities. 4/

Regarding this last point, the GAO report mentioned day care, physical fitness, health care, and family counseling. Tax-exempt organizations also cite cutbacks in federal funding and increased competition for private giving as additional reasons for their reliance on commercial activity. They also maintain that any "profits" from their "commercial" activities are used to provide additional services, not to pay dividends or similar forms of profit. Finally, nonprofit organizations point out for-profit advantages such as contract set-asides for small firms, tax credits, and capital access through stock issuance.

According to IRS data used in the GAO report, the number of tax-exempt organizations was just under 100,000 in 1946 and over 800,000 in 1983. The number of tax-exempt activities (e.g., increased from 90 to over 260 from 1965 to the present). However, broad statements about the impact of this growth can be misleading. The GAO

report found: (1) the degree to which commercial activities comprise a tax-exempt's total revenues varies widely among the various types of tax-exempts and (2) the perceived competition from tax-exempts differs by industry group. (4/ at pp. 28-41)

The GAO report concluded that "complete data do not exist to quantify the nature, extent, and impact of competition between these two communities," although the available evidence suggests that the two sectors are "increasingly competing to provide similar services." (4/ at p. 1) Lack of prior interest in the UBIT issue and incomplete data collection by the IRS were cited as reasons for inadequate information on UBIT issues. IRS data may not specify the number, type, or the specific nature and extent of income-producing activities. For instance, in 1982 the IRS reported approximately 870,000 tax-exempt organizations. Another study conducted by the Independent Sector, an organization concerned with enhancing philanthropy and not-for-profit initiatives, reported just under 1.2 million nonprofits in the same year. It may also be difficult to differentiate between taxable income-producing activities and tax-exempt activities within the same organization.

In its response to the GAO report, the Independent Sector (IS) criticized the study's inconsistent use of volunteer employment data, failure to adequately differentiate categories of income, use of inaccurate data, and biased survey methods. More thorough examination of the available data, according to IS, indicates that there has not been a significant increase in the dependency on income-producing activities. Otherwise, the Independent Sector suggests that the GAO report provides "valuable evidence that much more data are necessary before the relationship between the nonprofit and for-profit communities can be properly assessed." 5/

As stated above, the 1986 White House Conference on Small Business adopted recommendations relating to the commercial operations of nonprofit agencies. The five recommendations concerning UBIT are: (3/ at pp. 7-10)

- impose higher taxes on or prohibit unrelated business activities;
- more clearly define what constitutes unrelated trade or business and determine its impact on non-tax-exempt firms;
- create a threshold at which tax-exempt status would be lost should unrelated business activity exceed a specified percentage;
- further restrict or eliminate UBIT exemptions, especially those "primarily for the convenience of (a tax-exempt organization's) members, students, patients, officers, or employees" and research (513 (a) (2), IRC); and

- review Internal Revenue Service forms and regulations to determine whether they accurately reflect the intent of UBIT.

Another UBIT issue from an economic development perspective concerns the degree to which the presence of nonprofit organizations influences an area's quality of life. The various charitable and related social functions may serve as an additional incentive for businesses and individuals to relocate. Many large companies and influential individuals are heavily involved in the activities of nonprofit organizations.

Privatization

Background. The concept of privatization is closely related to the foregoing discussions of commercial activities of government and tax-exempts. A detailed discussion of the merits of and concerns with privatization is presented below.

The premise underlying privatization is that, because private firms are subject to competition from other firms, they are compelled to provide goods and services more cheaply and efficiently than government agencies. Proponents contend that more government services performed by the private sector would result in increased tax revenues. Other factors increasing the pressure for privatization are decreasing federal government support for local programs and tax-limitation initiatives that have constrained revenue-raising abilities of various levels of government.

Privatization may have one or more of the following goals:

- lowering the cost of providing government services;
- reducing demand for government services, usually by instituting or increasing fees, and thereby lowering total government expenditures;
- reducing government programs without reducing demand;
- increasing government revenues by enacting fee-for-service practices; and
- increasing the amount, quality, or efficiency of government services without increasing costs.

Several ways by which government services can be privatized are described below.

Contracting out. Perhaps the most common privatization technique, profit or nonprofit firms can be contracted with to provide all or a portion of a product or service. At the local level, contracting can involve garbage collection and fire protection; at the

state level, professional consulting, health care, auditing, and data processing services may be contracted with outside companies. A survey conducted by the Council of State Governments in 1985 found that the majority of states contract for legal, medical, engineering, and technical professional services. 6/

Franchise agreements. Franchise agreements usually entail the provision of service to a given geographic area with users making direct payment to private firms for the service. This type of agreement can be exclusive (government-granted monopolies) or non-exclusive (several providers in a given area). Services provided may include transportation, telephone service, utilities and gas, and water supply.

Grants or subsidies. Governments may make direct payments to non-government groups to provide incentives to support or to reduce the cost of a service. Grants and subsidies are used in the health and education fields, and for cultural programs.

Vouchers. Vouchers are redeemable certificates used by eligible recipients to purchase a service or product. Vouchers are often intended to increase the choices available to consumers of government services and to introduce competitive aspects into the delivery of certain services. Housing and health care are areas in which vouchers have been used.

Regulatory and tax policy. Changes in tax rates can be instituted to encourage the private sector to undertake certain activities. User fees and fee-for-service practices can decrease the use of government services while also producing revenues to support those services. Such fees more directly impose the cost of a product or service on consumers. The deductibility of charitable contributions is an example of a tax policy to support non-government activities. Toll roads and park entrance fees are examples of fee-for-service programs.

Self-help and volunteerism. Private groups may be called upon to provide a service for free, or assistance may be given to those providing a service for themselves. Social services are often augmented with volunteers. Neighborhood crime watch programs are an example of self-help programs.

Divestiture. Also known as service shedding, governments may simply cease providing a service because of cost or other considerations. Non-government groups then decide whether providing the service will be profitable or whether the service should continue to be provided.

Policy makers considering different approaches to privatization should be aware that the effectiveness of each approach depends on conditions in each jurisdiction (such as the number of competitive firms in a given field), on the quality of the implementation

(government oversight or the private agency's capabilities), and on maintenance of that quality in subsequent years. 7/

Proponents of Government Provision

- Small marginal costs are associated with expanding existing government services.
- Governments can achieve degrees of efficiency and economies of scale by virtue of the large quantities of supply purchases.
- Those opposed to privatization also cite the private sector's lack of awareness of consideration of the external effects of their operations (e.g., pollution).
- Proponents rebut the private sector's presumed innovation and efficiency advantages by citing inadequate research and development and capital expenditures and poor productivity among private sector employees. They also point to private sector contract cost overruns and fraud.
- Administration and oversight of contracts can also be costly. It may also be difficult to specify certain responsibilities in a contract.
- Private provision of services is also susceptible to interruptions due to bankruptcies and strikes, especially in monopoly situations.
- Privatization decreases the degree of government control and reduces administrative flexibility in governmental service delivery.

Proponents of Private Provision

- Proponents of privatization point to constraints on program and personal flexibility imposed by state civil service systems. Private provision, on the other hand, improves efficiency and quality through innovation and modernization of procedures and equipment.
- Governments operate in the public eye which limits risk-taking and delays the use of alternatives.
- Because many state programs are not operated on a pay-for-performance basis, they lack motivational forces for efficiency and productivity.
- Private providers also pay lower wages and are able to avoid higher fringe benefit costs associated with public employees.

- Private providers return revenues to the state in the form of taxes and fees.
- Employing the private sector also reduces dependence on single source suppliers.
- Privatization allows government to take advantage of specialized skills in the private sector. This increases government flexibility without having to continually maintain such expertise.

Professor Savas of Columbia University notes that:

It is obvious that these claims and counterclaims are to an extent mutually inconsistent and conflicting ... It is claimed both that contracting reaps and that it dissipates economies of scale. It surmounts civil service obstacles and subverts the merit system. It increases and reduces government flexibility. It makes scarce talents available to the government of those same talents. 8/

Other Considerations

The existence of such contradictory arguments increases the need for careful analysis of the potential impacts of privatization. (7/ at pp. 9-12)

Current costs. Reducing government costs is oftentimes the impetus for privatization. Potential cost savings should be accurately identified. Approaches such as vouchers or franchise agreements may have high administrative costs. The existence of sufficient providers to insure competition may determine the level of cost savings.

Cost shifting. Fee-for service efforts may decrease demand and lower government expenditures but may also increase the burden on certain consumers. An analysis of the winners and losers in this situation should be conducted to determine the program's impact on existing distribution patterns. Privatization may lead to a monopoly situation. Smaller or more isolated communities may be left without the means to provide certain services.

Choice. Service alternatives should be evaluated as to the degree to which they increase the choices available.

Quality/effectiveness. Private provision in a competitive environment should increase the quality and the effectiveness of the service delivered. However, private firms are generally not subject to pressures resulting from public scrutiny. There also may be a lessening of accountability with privatized services.

Service disruptions. When assessing different approaches, evaluations should account for the possibility of service disruptions (strikes, bankruptcy). Contingencies may be necessary. The ease and costs associated with reversing a particular approach should also be considered.

Ease of implementation. Implementation considerations include legal and time constraints, political difficulties, and resistance by interest groups.

Privatization Cost-Benefit Findings

It is difficult to compare public and private sector costs associated with a given product or service. One reason for this is that private interests normally have one goal -- to maximize profits. Government, on the other hand, may have several reasons for providing a given product or service, including provisions at or below cost because of social concerns. Differences in accounting techniques may hinder direct comparisons between public and private projects. Cost accounting is common in the private sector but is seldom used by governments. In fact, one argument used by proponents of privatization is that because governments do not consider per unit costs, it cannot be more efficient than the private sector.

As described earlier, there are many different ways to privatize government functions. The level of government involvement changes with each technique -- from oversight and competitive bidding against private firms, to service shedding. This spectrum of techniques further complicates analysis. Other considerations include the difficulty of allocating insurance costs to a given government agency and allocating employee fringe benefit costs accurately.

According to a recent study of privatization in Florida, total local government savings of between \$715 million and \$1.9 billion annually could be realized if privatization were vigorously pursued. It was found that the medium-sized cities in Florida could realize savings of 14 to 33 percent while large counties may realize gains between 6 and 16 percent. The most promising areas for privatization were in transportation and cultural and recreational programs. 9/

However, Harry P. Hatry, Director of State and Local Government Research at the Urban Institute, notes that, "Some have estimated that a 10 percent reduction in cost across-the-board is probably about the maximum reduction to expect, but this may be higher for individual services." (7/ at p. 4) It should be noted that the degree of savings also depends on the extent to which privatization has been utilized to date. Several authors have commented on the greater preponderance of privatization efforts in the western United States as compared to the East. One reason for this is the lower level of unionization in the West. Also, the opposition of interest groups can play a large part in the success of privatization programs. Hatry concludes that:

Unfortunately, little systematic, objective evaluation of most of these alternatives is available. Most available information is descriptive, anecdotal, and advocacy or public relations-oriented. (7/ at p. 9)

After reviewing several cost comparison studies in solid waste collection, transportation, health care, education, and social services, Savas concludes that, while there are clear examples where private providers are able to charge fees for equivalent services or products,

It is evident that with few exception, little rigorous research has been done to evaluate and compare public and private provision of services. Nevertheless ... it is safe to say, at the least, that public provision of services is not superior to private provisions, while those who believe on a priori grounds that private services are best can find considerable support for their position. (8/ at pp. 110-111)

Conclusion -- Privatization

The explicit arguments regarding privatization concern efficiency, effectiveness, and productivity. Implicit in the discussion, however, is a more fundamental reexamination of the proper role of all levels of government.

In articles examining the choices and issues involved with privatization, Keon Chi, a researcher with The Council of State Governments notes that:

No consensus exists as to how state agencies should establish criteria for deciding whether to 'make or buy' ... The debate over privatization seems centered around redefining the proper role of government. The question is whether government should remain a policy maker, regulator, manager, and protector, but not a producer or provider of certain public services. (6/ at p. 13)

Officials, both elected and appointed, and service managers should take on a new, broader role. They should be encouraged to think and act as community service providers and overseers, and not solely as service deliverers. They should consider a wide spectrum of alternatives to public service delivery. 10/

Section B: Venture Capital

Financial Capital in the Economy

As businesses are created and grow, they pass through various stages of development. At each stage, the ingredients for continued growth change. These may include management skills, personnel, and raw material requirement. Likewise, the financial requirements of each stage also differ. A young firm without sufficient collateral or experience requires capital based on potential earnings or future value, while an established firm may have sufficient assets, cash flow, or the track record to obtain conventional financing.

For a new company to grow, a variety of different types of financing must be available. The lack of any one type of financing can impede business and overall economic expansion while also straining the other sources of financing. Within this continuum, venture capital is placed at or near the beginning. As such, a lack of venture capital can severely limit the rate of new business formations and small business expansions. Several recent studies have noted that new or young firms account for a large share of net new job creation and are the source of much innovation in the economy. If new ideas of young companies cannot find adequate financing, the economy as a whole may suffer.

Characteristics of Venture Capital

Venture capital has several characteristics that distinguish it from conventional sources of capital such as commercial banks.

- Venture capital is usually defined by how early it enters the business development process (seed, start-up, and early stage). Venture capitalists may also become involved in later stage developments such as management or leveraged buy-outs.
- Early stage finance usually entails more uncertainty concerning the firm's future profitability (or even its survival). This uncertainty -- translated into risk -- requires higher rates of return on investment than those expected by other lenders. This can range from 36 percent compounded annual rate of return for a company already in a rapid expansion phase up to over 75 percent for seed financing. 11/
- These risk levels also promote common portfolio practices among venture capitalists. These practices include diversifying by funding sources, by geographic region, across various types of business and stages of business growth, and by co-investment with other

venture capitalists. This last practice often serves as a check on investment judgment.

- Because so many of these investments are in new companies, venture capitalists are often much more involved in the company's affairs than other lenders. In this regard, they may provide or secure management, technical, product development, or marketing assistance. Many venture capital firms remain involved when second and third round financing is needed. Because of these practices, venture capital is often referred to as "patient capital" because its rewards may be ten or more years in the future. Future financial arrangements are preferred by 94 percent of independent venture capitalists while only seven percent prefer day-to-day operations of the company. (11/ at p. 34)
- Venture capitalists normally loan funds in exchange for immediate or future equity participation in the company. Should the company prosper and either: 1) "go public" with its stock; or 2) be bought out by another company, the venture capitalist relies on this eventual stock or purchase price being many times that of the initial investment.

This equity participation can be a source of frustration with entrepreneurs. Because risk often inhibits conventional funding, entrepreneurs are often compelled to give up some control of their company in order to receive the necessary financing.

Structure of Venture Capital Industries

Venture capital can be categorized into three sources -- private independents, subsidiaries of financial and non-financial firms, and Small Business Investment Companies (SBICs). Additional sources include initial public offerings (IPOs) and wealthy individuals. Concerning the latter, it should be noted that there are little data available on the extent or impact of informal private investment. Differences in investment behavior and the market impacts of the major organizations are examined below.

Independents. This group dominates the venture capital field, holding over seventy percent of the total venture capital pool in 1984 (\$11.8 billion). Independents are normally engaged in what are considered traditional venture capital activities -- start-up and early stage financing. Portfolio managers may be former investment, commercial, or merchant bankers, entrepreneurs, or organized groups of individuals within a general or limited partnership.

Corporate venture capital. Large companies have attempted to create a venture capital atmosphere within their structures (employees

are known as "intrapreneurs"). These activities stem from the desire of large companies to: 1) access venture capital's high rates of return; 2) prevent employees from leaving with their ideas to create new, competitive firms; and 3) to create a "technology window" through which to access and use the latest technological discoveries. Agreements with employees normally entail some degree of proprietary rights for the parent company.

SBICs. SBICs are authorized under federal legislation in a program administered by the United States Small Business Administration. SBICs have restricted investment goals but are also able to access SBA funds at below-market rates. These lower rates confer an advantage over venture capital funds. SBA funds of this type have been diminishing in recent years. SBICs receive much of their capital from institutional investors. Such participation, if the firm is successful, may represent future loan business for such institutions. Another form of SBIC is the Minority Enterprise Small Business Investment Company (MESBIC). MESBICs must invest in companies wholly or substantially owned by minorities, women, or veterans.

Trends in Venture Capital Availability

A variety of factors influence the availability of venture capital. A recent study by the Office of Technology Assessment (U.S. Congress) listed several of these factors, the most significant of which were:

- federal tax policy with respect to capital gains;
- laws and regulations affecting pension funds (e.g., ERISA) and other major sources of investment capital;
- the market for new public stock offerings by small companies; and
- the track record of experienced professional venture capitalists. 12/

Between 1969 and 1977, new funds raised by venture capital companies fell from \$171 million to \$39 million. (11/ at p. 6) During the same period, underwritings for new stocks fell from \$1.4 billion to \$16 million, according to OTA. (12/ at p. 43) Thereafter, lower federal rates on capital gains, modification of investment restrictions on pension fund investments at the federal level, and altered Securities and Exchange Commission (SEC) regulations (specifically regarding IPOs) are credited with having influenced total funds to grow from \$570 million to \$4.1 billion from 1978 to 1983. The nation's total venture capital pool grew from \$3.5 billion to \$11.5 billion during the same period. (11/ at p. 6) Venture capital from pension fund investments accounted for thirty percent of

new capital from professional firms between 1978 and 1982 (\$924 million. 12/ at p. 43)

Therefore, arguments concerning the shortage of venture capital may have had more validity in the 1970s. However, the rapid expansion of venture capital funds since 1978 has served to diminish some of the capital availability concerns by increasing the number of venture capitalists seeking business proposals. This increased competition tends to drive down the quality of the business proposals that are financed. Thus, more funds "trickle down" to proposals that were, in the past, unattractive, whether because of lower rates of return, inadequate product idea or personnel involved, or other considerations.

Capital Market Imperfections

Several recent studies have concluded that poor capital availability is not caused by a lack of funds but by imperfections in the allocation of available funds. 11/ 12/ 13/ Several factors are cited:

- inadequate information about small business activities;
- the costs of obtaining such information;
- disproportionately high transaction costs for small business;
- lack of expertise and knowledge of small business operations and requirements;
- regulatory and tax policies may erect barriers or skew risk/return ratios; and
- lack of secondary markets for small business securities.

These factors can prejudice institutional investors against new and young businesses. The Corporation for Enterprise Development (CFED) reported that, "more and more evidence indicates that appropriate amounts and kinds of capital are not available to all types of business", particularly new and young firms, those in depressed communities, minority and women-owned businesses, and firms with non-traditional organizational structures (co-ops, worker-owned companies, non-profits, and community developed corporations). (13/ at p. 2) The survey commissioned by the Joint Economic Committee (JEC) of the United States Congress similarly noted "substantial evidence" that "small and large investments are not being evaluated solely on the basis of their economic merits." (11/ at p. 43)

Investor biases. Additional information supplied by the JEC survey point to investment biases among venture capitalists with over 57 percent of independent funds preferring proposals dealing with technology to improve productivity. (11/ at pp. 27-28) These ventures tend to offer higher growth rates and, thus, greater capacity for higher returns for venture capitalists. OTA found the following industry distributions among venture capital portfolios:

- computer fields -- 30 to 40 percent;
- communications -- 10 percent;
- other electronics -- 12 to 14 percent;
- medical -- 7 to 8 percent;
- genetic engineering -- 4 percent; and
- industrial automation -- 3 to 4 percent.

The remaining 20 to 34 percent of investments were in energy, industrial products, consumer-related areas, and other manufacturing and services. (12/ at p. 44) Most of these types of firms, however, are not common in rural or depressed communities or in regions of the United States where business growth is most needed. Overall, labor-intensive or so-called low- and mid-technology businesses receive far less funding. Because Colorado's economy is dominated by the kinds of small businesses that do not normally receive venture capital -- wholesale, contractors, banking -- these considerations may be of particular importance.

In addition, with the exception of SBICs, most venture capitalists invest an average of over \$500,000 in each business proposal. According to the JEC study, the literature "implies the existence of substantial numbers of small investment projects that offer competitive market rates of return but remain unfunded because of certain market deficiencies." (11/ at p. 39) This type of financing is usually beyond personal and family resources -- so-called F&F funds for "family and friends" -- but before the financial thresholds considered worthwhile by venture capitalists. A small percentage of venture capital funds -- 12 percent for independents -- are devoted to pre-start and seed proposals. (11/ at p. 24)

Regional biases. Another quality of venture capital is its tendency to fund proposals that are close to home (almost 36 percent for independents and over 45 percent for SBICs). Venture capital funds are highly concentrated in California and New England. Other regional barriers include:

- differences in the availability of quality business proposals; and
- differences in the willingness of regional institutional investors (pension funds, commercial banks) to take risks.

The authors of the JEC report state that the main source of the problem is imperfect information regarding inter-regional investment

opportunities between venture capital rich and poor regions. Regional differences in the availability of high quality proposals and the geographic concentration of venture capital firms were the main reasons for regional imbalances in venture capital availability. (11/ at p. 54) OTA concludes, "It follows, therefore, that entrepreneurs in an area with few or no venture capital firms focusing on seed or start-up situations will have a more difficult time accessing venture capital than those in an area with numerous venture capital firms focusing on early stage financing." (12/ at p. 44)

Proponents use many of these arguments in support of government intervention in capital markets. Because unfunded start-ups represent a large number of missed opportunities, they represent potential economic growth if assisted by state government. However, opponents point to the hands-on style of venture capitalist investments and contend that the experience, management and technical expertise does not exist in government to adequately monitor or assist these types of investments. Indeed, many state venture capital programs are not operated by state employees or officials.

Public Policy Issues

Based on the proceeding observations, CFED identifies two causes for the inadequate operations of capital markets:

First, when capital markets have failed to invest **efficiently** in profitable, job-creating enterprises, and second, when capital markets have failed to allocate capital **equitably** to otherwise profitable, job generating enterprises. There is a subtle, but important, difference between these two cases. In the first, the market has failed to recognize an opportunity to invest, by its own standards; in the second, ... the market rightly perceives that it has lower risk or higher return opportunities elsewhere. These different sets of circumstances call for different types of government intervention. (13/ at p. 4; emphasis in original)

If imperfections in market efficiency and behavior are at the root of limited venture funds, additional state appropriations of venture capital funds may not solve the problem. Because many of the causes of insufficient capital are regional in nature, state and local policies will impact the performance of local markets. This can be accomplished by:

- assisting the creation and support of regional and national information networks to recruit local entrepreneurs and venture capitalists with outside sources of venture capital (co-investment);

- stimulating research and development activities at universities and assisting technology transfers from such programs, thereby increasing the demand side of venture capital;
- supporting a highly-educated workforce on which entrepreneurs depend (accountants, lawyers, research, and development personnel);
- diminish regulatory barriers to allow institutional investors to invest in riskier proposals;
- provide incentives to institutional investors to invest in riskier proposals;
- more closely coordinate state securities regulations with those of the federal government.

CFED notes that regulated financial institutions control four out of the five investment dollars. Therefore, policies that do not address them will have only marginal impacts. On the other hand, small policy changes may leverage large amounts of capital. (13/ at pp. 17-18) Another author recommends a proactive approach to interstate banking, high standards of performance and support for state banking commissioners, and state leverage of insurance industry funds. 14/

The authors of the JEC study maintain that:

In principle, the role of public policy ought to be focused on rearranging the landscape -- at redressing institutional deficiencies so that capital markets can work efficiently -- and not on lavishing government subsidies, tax favors, and grants on targeted small- and medium-sized businesses. (11/ at p. 41)

Noting that the best training for venture capitalists is experience, the JEC report stated:

Probably the best government policy to pursue is one that maintains a vigorous entrepreneurial climate, and allows the venture capital process to sort out the competent and incompetent, would-be venture capitalists... (11/ at p. 19)

These arguments are in addition to the fact that state venture capital contributions are very small compared with the overall amount of venture capital funds. However, proponents of state initiatives in this area contend that state moneys provide additional incentives for private activity and that there is a halo effect over businesses that have secured public financing. Another issue is possible conflicts between state policy goals such as job creation and the goal of venture capital funding -- high rates of return.

Gary Bettger, a researcher at the National Conference of State Legislatures, suggests that:

At the onset, a policymaker must first closely study the role and scope of private venture capital and the problems and the capital needs faced by businesses before deciding what type of program, if any, to propose. Each (state) must understand its own capital market structure before considering the adoption of another state's methods. 15/

Venture Capital -- Conclusions

CFED offers criteria for designing and selecting public policy alternatives directed at an entrepreneurial climate. It suggests that initiatives:

- should be similar in size to the magnitude of the problem;
- should minimize use of new state funds, and involve redirecting underutilized public expenditures or private investment flows;
- should be market-sensitive, that is, aimed at making the private economy work better without involving complicated state administration, nor pretending that markets work perfectly if left to themselves;
- should be targeted as carefully as possible on the barriers identified: availability of seed money, equity investment, and long-term debt. The focus should be access to capital, not cost of capital (emphasis in original); and
- should use public funds only where there is clear public return. (13/ at p. 7)

CFED also recommends that: states not assist businesses with activities that they would have proceeded with anyway; proposals be evaluated in terms of their impact on consumers, employees, taxpayers, and the environment; programs be tailored as much as possible to a specific need; and states resist programs that cannot be conducted successfully.

Bettger offers a series of questions that states may wish to review as they consider the issue of state venture capital initiatives. (15/ at p. 9)

- What are the state's economic development goals? Does public lending accomplish such public purposes as economic and technological diversification and institutional change?

- How does a venture capital program fit into this plan, whether it is a "grand strategy" or a collection of separate programs?
- Are there capital market imperfections? What are they? Can the state effectively intervene and complement or stimulate the workings of the financial markets and institutions?
- Is there a shortage of private venture capital in the state and, if so, why?
- What mechanism exists for generating a pool of venture capital? Should the state compete with the private sector?
- What would be the costs and benefits of instituting a state-sponsored venture capital initiative?

Section C: Kansas Economic Development Program

In early 1986, the Kansas State Legislature created the Joint Legislative Commission on Economic Development to study the state's role in promoting economic development. Its interim recommendations were incorporated into nine bills enacted in the 1986 session. Major programs are briefly described at the end of this section.

The commission also appointed a series of task forces to study agriculture, the state's capital markets, tax structure, higher education, and business training programs. Various economic development consultants and state university personnel were enlisted to conduct a more in-depth analysis of the state's economy in the latter half of 1986 (known as the Redwood Report).

Characteristics of the Kansas Process

The interim committee received testimony from Kansas Senator Wint Winter, Jr., chairman of the Joint Legislative Commission and chairman of the Senate Committee on Economic Development. Senator Winter noted that the Kansas economy has long been dependent on three industries -- aviation, agriculture, and oil and gas. During the most recent economic recession, all three industries suffered severe declines. This had not happened before nor had the problems continued as they have most recently. The seriousness of this situation increased the awareness among public and private sector leaders that different actions and increased cooperation were needed.

According to Senator Winter, consensus among the participants evolved around certain points during the process.

- First was the need for lower expectations concerning any immediate or dramatic benefits from any programs that might be created.
- Second was the need to identify which ideas would work and which would not and, in order to frame discussion, which belonged within the rubric of economic development and which did not. Inaction had clearly landed the state in its current position. Building program emphasis around business recruitment techniques -- namely, lowering state tax burdens and wage rates to attract out-of-state companies -- did not appear to provide the fundamental changes that were needed in the state's economy.
- Third, the alternative to industrial recruitment is concentration on strategies that improve internal rates of economic growth, such as working to keep its graduates from leaving the state by improving the quality and quantity of local job opportunities.

In opting for internal growth, the commission realized that such an approach imposed a longer-term perspective on the state's efforts. This entailed: (1) creating, attracting and keeping more, higher paying, and longer-term jobs; and 2) diversifying the state's economy in the context of increased international competition. Instead of investing state funds in programs that appeared to yield shorter-term (and usually more politically appealing) solutions, Kansas concentrated on "what it does well". In place of increasing the profits of certain companies, business incentives as well as other program proposals would be evaluated based on whether they created more, higher-paying jobs and helped the citizens hold such jobs. In the words of Senator Winter, "people became the bottom line."

Another critical component of Kansas' efforts was joint funding of the Redwood Report among the state's diverse interest groups. In addition, all participants agreed to: (1) support the eventual findings; (2) not have any preconceived notions as to what solutions were best for the state; and (3) not use the study results for political purposes. During this process, the outside consultants provided the means through which politically unpopular ideas or issues could be raised in public without a backlash against elected officials.

Selected Kansas Programs

Kansas, Inc., is a quasi-public nonprofit agency which acts in an advisory capacity to the Governor, legislative committees, and the Kansas Department of Commerce. Kansas, Inc., is governed by a 15-member board of predominantly private sector persons and charged with: coordinating all parties having a role in the state's development; overseeing the implementation of the state's economic development plan, as well as its continuing evaluation; revising and updating the state's econometric model; and overseeing Kansas Venture Capital, Inc.

Kansas Venture Capital, Inc., (KVCII) is a statewide risk capital network. The Secretary of the Department of Commerce is authorized to invest \$20 million in state funds in KVCII nonvoting preferred stock when an equal amount of voting common stock has been purchased by financial institutions, individuals, and corporations in the state. Investors are also granted an income tax credit for this investment and dividends are exempt from state and local taxes. KVCII is governed by a 15-member board of directors composed of representatives of the state's financial institutions and various business sectors.

Kansas Technology Enterprise Corporation (KTEC), a nonprofit corporation, was created to foster innovation in existing businesses and the development of new businesses by supporting basic and applied research and its commercial application. KTEC's goals are accomplished by awarding grants and engaging in seed capital financing. KTEC may own patents, copyrights, and proprietary processes and engage in royalty agreements. It is governed by a 15-member board of directors composed of the Governor or the Secretary of the Department of Commerce, four members from various geographic areas of the state, and ten members representing agriculture, oil and gas, advanced technology fields (e.g., aviation), emerging industries (e.g., telecommunications), and venture capital.

PART II

Economic Development: The 1930s to the Present

The first concerted state efforts to implement a strategy for "economic development" began in the 1930s. The premise underlying these efforts was that if sufficient incentives could be created -- mostly in the form of tax abatements, lease and land grants, and the prospects of cheap labor -- manufacturers could be lured away from the high-tax and high-cost union areas of the industrialized North and Northeast and into the low-cost, non-union South. Collectively, these efforts became known as industrial recruitment or "smokestack chasing". 16/

In the 1960s, transfer payments and other forms of income redistribution were intended to stimulate economic activity by increasing personal income. Emphasis shifted to job creation in the 1970s with increasing use of cooperative arrangements between public and private groups and the leveraging of government funds. Still, industrial recruitment remained an important element of state economic development programs.

If a few states had practiced these methods, they might have become an economic paragon emulated by others. Likewise, the approach may have worked with more than one player if economic growth could have provided a new major facility -- such as General Motor's Saturn automobile plant in Tennessee -- fast enough to placate demand as another slice of an ever-expanding economic pie. However, the techniques of industrial recruitment spread and the number of sought-after facilities has remained relatively small. What was originally intended to boost income, enhance the tax base, and improve the standard of living resulted in a no-growth game of moving jobs from one region or state to another or from one area within a state to another. The impacts can be costly, widespread, and long-lived.

Not unlike a poker game, each additional state vying for (or trying to retain) a limited number of industrial plants predictably increased the stakes for each facility for all those at a table that has been, until recently, the only game in town. Few states have in place the means to accurately identify what they can afford to pay (e.g., land grants, subsidized training) or what they can afford to lose (e.g., revenues lost through tax abatements and credits) in order to attract such prized facilities as the Saturn plant or, most recently, the federal government's Superconducting Super Collider atomic particle accelerator (SSC). To the contrary, the approach seems to be that the players cannot afford **not** to bid, despite the cost.

The location of a large plant may dramatically increase the strain on public services such as roads, housing, schools, and social programs. Revenue foregone as a result of tax abatements and credits

may undermine the ability of the tax base to fund such improvements at the very time when they are most needed. This is especially true of property tax abatements upon which many local public works improvements depend. Tax subsidies may also put similar, established businesses at a competitive disadvantage. Arguably, it is more likely that this approach was undertaken precisely because similar firms did not exist. However, the burden of financing the improvements nonetheless falls upon remaining taxpayers and other firms. In terms of government budgets, tax credits may also be viewed as a silent and usually unquantified revenue drain.

Direct state aid raises similar equity questions with existing firms. Less defined but no less important is the signal that industrial recruitment efforts may be sending. The message may be that the state is unconcerned with the problems of its native businesses. Industrial recruitment may foster the perception of an unfavorable business climate among existing businesses.

Another issue is that of the staying power of the industrial recruitment approach. If a firm moves its operations based on the best incentive package available at the time, few constraints exist to prevent that same firm from relocating again once the incentives have ended or if a more lucrative package is offered elsewhere. At that time, the bidding competition may recommence. Until recently, the competition has been state versus state; the resulting jobs always remained within the national boundaries. What has substantially altered the quality of the game and greatly increased the stakes is the globalization of the United States economy.

Global Economic Change

Since World War II, nations with little or no industrial capacity have dramatically expanded their ability to produce goods competitive with goods produced in the United States. Korea and Japan are obvious examples. One important component of this ability is large differences in the cost of living and wage rates between these countries and the United States. Additionally, globalization of communications systems and financial markets have changed the importance of geography in the location of manufacturing facilities. The increasingly international character of economic transactions also implies greater importance for currency exchange rates and, relates to each nation's balance of trade. The implications of these changes for industrial recruitment strategies and future state economic development programs are important.

If manufacturers are no longer physically constrained in terms of where their production facilities must be located, and if the most intense competition comes from countries where wages are substantially below those of the United States, companies wishing to survive have few choices. One choice is to attempt to diminish the importance of wages as a component of product cost. If production is to remain in the United States, this can be done through increased automation

(e.g., robotics), or simply by paying lower wages. Another choice, elected with increasing frequency in recent years, is to move production facilities overseas into cheaper labor markets.

To the contrary, Professor Peter Drucker, a well-known management expert, contends that the cost of labor as a competitive advantage will diminish as continued globalization of each nation's economy increases the importance of exchange rates, movement of capital, and credit flows. He contends that this will also be true of advantages associated with the cost of materials, energy, and transportation. 17/

Increased automation is arguably a positive benefit for the overall economy if it increases productivity. It may, however, result in the loss of jobs. The alternative -- lower wages -- decreases the standard of living of the workforce. Diminished purchasing power reverberates through the economy in the form of reduced demand for other products and services such as housing and durable goods. This results in further layoffs in affected sectors of the economy. If labor in the United States is forced to compete on the basis of wage, pressure will be exerted on the standard of living until a competitive equilibrium is established.

If industrial recruitment is pursued, the consequences are clear. Unless workers incur dramatic reductions in their standard of living, the competition will increasingly be between Korea and Sri Lanka, not Pennsylvania and Mississippi. However, another option lies, ironically, with the very same factors that have worn away the insulation from the influences of foreign markets. Those factors form the basis of recommendations that utilize a few crucial comparative advantages remaining for the United States and the industrialized nations of Europe.

Economic Development: Beyond Industrial Recruitment

Important to the emergence of the global economy are the advances in technology. The rapidity of technological change seems rivaled only by the rate at which its importance grows. Technological preeminence was gained by the nations of the industrialized West based on a skilled and highly educated workforce. Information and a workforce knowledgeable in how to use it form the basis of the advantages that can be utilized by the same nations to remain competitive. According to the Corporation for Enterprise Development, high-wage markets can compete by:

producing technology-intensive products and services that are changing so quickly that they are obsolete before they can be routinely mass produced by an overseas, low-wage competitor...(and by) producing products and services tailored to the specifications of narrow niches in the market and even to individual consumers. The common denominator for all of these industries is ideas --

research, inventiveness, and ingenuity in the creation of new products and services or in the adaptation of old ones, and the flexibility and agility to continually improve and revise those products and services to meet rapidly changing market demands. 18/

Even though states cannot significantly influence exchange rates, the balance of trade, or the nation's overall foreign policy, they have powers which significantly influence their economies' ability to react to changes in world market forces. Among the most important of these is education.

Education and Training

One fundamental purpose of education is to establish a foundation of basic skills needed by citizens to function in society. For a large part of the history of the United States, functional levels of literacy and math skills were sufficient to survive and to secure and hold family-wage positions in a manufacturing-based economy. However, if "research, inventiveness, and ingenuity ... flexibility and agility" are the skills required for the next century, striving for functional skill levels may no longer be sufficient. If CFED is correct in that future economic survival depends on evermore technology-intensive products and services, mastery of higher-order thought processes will define a nation's competitiveness. Competitive advantage will flow to reasoning, technical problem-solving and analytical skills, creativity, and innovation. Such abilities yield the unique perspectives that foster original combinations of production and organizational factors that create whole new products and production processes. Education becomes the means to that advantage and one of the most crucial elements determining how fast and how far an economy can rise and who is carried along.

Adaptability of the workforce -- learning new skills quickly -- becomes another important "skill" that carries its own particular urgency. Job turnover has increased 50 percent in five years. Where a trade or skill once provided a lifetime of employment, accelerating rates of technological change are making skills obsolete only a few years after they have been learned. These trends place additional pressures on the education system to maintain a clear connection between what it provides and what job markets demand. It also requires quick responses to swift changes in those markets as well as flexibility in the methods by which new skills are taught. Because ninety percent of the current labor force will still be on the job in the 1990s, quicker reaction to change and greater flexibility of delivery will only grow in importance as retraining, lifetime learning, and serial careers become the norm rather than the exception.

One other consideration is the role education may play in assisting the disadvantaged. When it becomes clear that today's students represent the workforce of the year 2000 and beyond, the

importance of assimilating diverse ethnic groups, and reducing teenage pregnancy and dropout rates becomes even clearer. Also, beyond their necessary technical skills, students should understand the full dimensions of the globalization of the economy and

have a firm conceptual grasp of a wide range of subjects in the arts and sciences that only a handful can now be said to understand ... be able to communicate complex material effectively ... (and) demonstrate a high degree of initiative ... 19/

Because of the states' role in education, these developments position the states as the driving force behind their own economies and, collectively, that of the entire country. The ways in which the educational system is changed to respond to these forces may do more to determine the fitness of United States competition than any other single factor.

Education as Investment

According to Roger Vaughan, an economic development consultant and coauthor of The Wealth of States, states should view their education budgets from an investment perspective rather than as an expenditure that must be kept under control. Viewed this way, oversight agencies become less concerned with what goes on in schools -- the education **process** -- and more concerned with the final **product**. Expenditures are no longer only controlled but evaluated according to what the state is receiving for its money.

For the education system to insure the relevance of its product -- students -- to changes in market demand for skills, the system itself must be made aware of those changes. One efficient and relatively inexpensive method is by increasing the awareness of the consumers of the system -- students, prospective students, and parents -- as to how effective the system is in preparing its "product" for the arena it enters upon graduation. Mr. Vaughan mentioned programs in Arizona and Kansas that track graduates into the job market.

Using social security numbers, students are tracked from school into the workforce. Correlations can then be made between the student's school, course selection, and grades and his employment status and income. Such information provides students, parents, and administrators with indications of which schools' graduates are most employable, what types of jobs those graduates secure, their income, and any relevant connections with the student's grades and course selection. Publication of this information should increase pressure to improve the performance of those schools which do not perform as well as others. Another method is to tie additional state funding to selected performance criteria such as standardized testing, job placement rates, or first-year income measures, or goals such as reduced truancy or teenage pregnancy.

Corresponding with such market-oriented approaches is the need to: (1) increase the flexibility of the school system to pursue the goals established; and (2) improve the accountability of school administrators and teachers. By allowing each district or individual school to pursue a common set of goals, experimentation is encouraged and innovative solutions to those problems can be found. Accountability provides a point of feedback into the system to insure that it will either respond or be modified or replaced. Funding formulas based on last year's allocation merely serve to maintain the status quo in a system that is coming under increasing pressure to improve.

Tucker concludes:

The core of the challenge facing the states is to figure out how to greatly raise the quality of education provided ... without incurring a commensurate increase in costs. Meeting this challenge will necessarily involve bold changes in institutional structure, changes that go way beyond anything yet tried in the current wage of educational reform. (19/ at p. 7)

Vaughan concurred, remarking that states do not need to spend great sums of money to influence economic development. Greater difficulties arise because many of the actions needed are politically difficult to do. Similarly, an article analyzing twenty state programs that link education and economic development suggest that:

The human capital dimension of economic development will not be maximized until the powerful education and employment sectors become less protective of their narrow, traditionally-defined domains. They must move toward more innovative cooperative efforts aimed at producing a well-educated, well-trained employable workforce. 20/

Description of Other State Powers

Beyond the need to maintain a highly skilled workforce, movement away from industrial recruitment has compelled states to design strategies characterized by "creating an environment conducive to enterprise in general, not by policies designed to benefit one firm at the expense of another." (16/ at p. 36) However, two factors make this approach more difficult: (1) the increasing complexity and volatility of the national and international economy; and (2) a new emphasis on smaller firms as the primary source of job creation and economic growth.

Increasing complexity necessitates the thorough examination of the state's economy and the degree to which it is influenced by external forces. Increasing volatility necessitates ongoing monitoring and evaluation of the effectiveness of state programs, quick adaptability, and ease of modification. Compared to industrial

recruitment, addressing the needs of small business involves a dramatic increase in the number and diversity of firms and overcoming a general lack of an organized constituency. Because the sheer numbers and industrial diversity involved make targeted strategies prohibitive, states are concerning themselves more with the many factors that determine overall business climate -- those factors that promote business creations and expansions, as well as those that hinder them. In addition to education, such efforts include state regulatory powers and the strategic use of statewide perspectives and resources.

In many instances, these approaches are less expensive (even inexpensive) compared to the industrial recruitment alternatives. Though this may not be true of education (which is normally the dominant portion of any state's total expenditures) or for public infrastructure, the strategies detailed below are increasingly being recognized as critical to sustained economic development efforts. The result is a series of programs that are more flexible and which, if not less expensive, at least hold out the promise of continued effectiveness. At a time when revenues at all levels of government are stagnant or declining, states have been forced to find ways to do more with less.

State Regulatory Powers

Though not seeking to ignore the importance of state expenditures in economic development, Vaughan noted that, in the best of situations, states can only marginally influence their economies. This is a consequence of the small size of those contributions relative to the day-to-day activities of the private sector. Rather than spending scarce revenues to gain influence, states will have greater impact -- certainly on a dollar-for-dollar basis -- through the measured application of their regulatory powers.

Small changes can subtly alter a state's entrepreneurial climate by affecting the behavior of thousands of individuals and businesses and the millions of daily decisions. It can also change the functioning of the state itself (e.g., the education system). Examples include laws or regulations which restrict insurance company investments or prohibit commercial bank underwriting of municipal bonds. Thus, with minimal expenditures, states can leverage market behavior toward more efficient activities and more dynamic organizations which may better serve increasingly volatile local, national, and international economies.

State Resources and Perspectives

Analysis. Through analysis of a state's economy and its economic development, programs can help define existing strengths and weaknesses. Strengths entail areas of comparative advantages (e.g., natural resources and labor force skills, whether exploited or not)

and effective program organization. Weaknesses may consist of the absence of a needed program or resource (e.g., labor skills or public works), inadequacies within existing programs, or the identification of geographic areas of the state that are lagging economically.

In-depth analysis may also define those problem areas that a state can affect and those it cannot (e.g., commodity prices). This may increase the degree to which state programs match actual needs and clarify which programs may work and which will not. Otherwise, resources may be wasted if state programs are instituted before the actual problems have been clearly defined.

Examination of state economies should also go beyond conventional indicators. The economic reversals of Massachusetts and Oklahoma indicate that important economic factors may be obscured by conventional measures of economic health and performance. A list of economic indicators that may provide a more accurate picture of the economy are presented below. 21/

Overall economic performance: rate of long term unemployment (more than 12 weeks); growth in per capita income; traditional indicators such as housing starts; vehicle registrations; and tax revenues.

Entrepreneurial climate: rate of new business formations and failures; venture capital placements; research activity at universities; local new public stock offers; and growth rates among the self-employed.

Long-term growth prospects: rate of diversification of the economy during the past ten years; measures of the performance of primary and secondary schools; reduction in illiteracy rate during the past five years; and average educational attainment of workforce.

Other aspects of a state's wealth: infant mortality rate; change in air quality in major cities; change in water quality; poverty rate (after government transfers and in-kind benefits); and crime rate.

A clearer understanding of the state's economy may also provide the common ground on which the public, government agencies, and economic interests can see: (1) the interrelation of various sectors and concerns; and (2) the usefulness of cooperative solutions. This may be especially true of various groups and government agencies unaware that their activities impact economic development.

Infrastructure. States can influence economic growth in their support for infrastructure -- roads and bridges, airports, water and sewer systems, reservoirs, and similar facilities. According to Vaughan, this impact is not in the actual expenditure of large amounts of money on specific projects or the creation of a wish list of projects. It is, instead, in the establishment of permanent, ongoing

review and advisory bodies that maintain inventories, assess and plan proposed projects, monitor controlled maintenance schedules, and review funding mechanisms.

The scaling down or elimination of planned projects or the reduction of capital maintenance budgets normally are not immediately noticeable nor do such budget items have organized constituencies. These factors, plus the fact that capital construction items usually entail large, multi-year expenditures, may explain why such budget items are the first to face reductions or elimination during periods of decreased revenues. These efforts support proper planning and the location of adequate funding while also guarding against under-budgeting and costly financing schemes.

A portion of the committee's discussions with the Governor and his staff concerned the construction needs of the state. Specifically, attention was drawn to the need for improvement to Front Range roads (including completion of the C-470 beltway around the Denver metropolitan area), the proposed convention center, a new airport northeast of Stapleton International Airport, prison construction, the proposed Two Forks Reservoir southwest of Denver, and the prospects for the location of the federal Super Collider project.

Considering that most of these projects are scheduled for completion in the near future, the Governor maintains that the magnitude of these projects will create artificially high demands for labor and materials. This will dramatically inflate the eventual cost of all these projects, in addition to placing extreme demands on existing housing and government services. In the opinion of Leonard Perlmutter, the Governor's Chief Executive Officer for Economic Development, public debate during the 1987 legislative session revealed that the point of contention is not the need for these projects but the funding mechanisms proposed. The realization exists that traffic congestion along the Front Range and the deterioration of rural roads may undermine the state's other economic development efforts. Likewise, the long-term impact of the new international airport on area facilities and government services could be great.

Though there are clear advantages to modern and well-maintained public works, whether this constitutes the best use of scarce public resources remains an argument defined by each state's particular situation. Still, "if a response to the need for capital improvements is significantly delayed ... the eventual cost of repairing and replacing these facilities will rise dramatically. Sustained economic growth and the creation of employment opportunities will also be likely casualties." 22/ However, debate continues concerning the extent and type of public capital facilities used by various types of business and the exact role that infrastructure plays in economic development and job creation.

Consensus and coordination. A broad perspective regarding all the activities and interests that exist within its boundaries allows a state to assume the role of coordinator, mediator, and organizer. Facilitating the relationships between various interests and agencies can reduce program redundancy and decrease the degree to which efforts are working at crosspurposes. Otherwise, state economic development programs may become a series of isolated decisions driven by individual perspectives on the nature of the problems involved. "In the end, a strategy will guide action only if numerous people and institutions understand it, share its vision, and work to accomplish it...(and is) only as effective as the institutions and people who develop and implement it." (16/ at p. 8)

PART III

Economic Development -- State of Colorado

Recent Initiatives, Current Programs, and Future Directions

Economic development in Colorado assumed a high profile during 1987. This is represented by initiatives from several quarters. Increased private sector concern was exemplified by publication of Blueprint for Colorado by the Colorado Association of Commerce and Industry (CACI). The Colorado General Assembly adopted several measures designed to promote economic development. These included the appointment of an interim Committee on Economic Development and the creation of the Colorado Economic Development Commission. The new administration also launched a series of efforts intended to improve the effectiveness of executive branch economic development programs. This Part III will examine each of these areas.

The Private Sector

Efforts of private sector groups are represented here by a recent publication from the Colorado Association of Commerce and Industry Blueprint for Colorado - A Plan for Growth from the Business Community. According to CACI, Blueprint is "a broad-based business viewpoint which outlines initiatives required to accelerate economic development, improve job opportunities and enhance the quality of life for the citizens of Colorado." ^{23/} Blueprint was the work of 150 business people from different fields and geographic areas of the state. Eight areas of concern were addressed: economic development, transportation, water, higher education, K-12 education, the environment, health care, and taxation and finance. Summaries of the recommendations in each of these areas are presented below.

CACI also produced a "report card" of the 1987 legislative session which summarized which of the Blueprint recommendations were enacted. According to that report, of the ³⁴ recommendations that required legislative action, 19 were approved, 8 enacted in part, and 3 introduced but not enacted.

Economic development. Noting the increasing interdependence of the various economic and geographic sectors of the state, the Blueprint expressed the need for increased cooperation and coordination among state, local, and private groups concerned with economic development. The Blueprint recommended the establishment of a jointly-funded, public/private economic development council to oversee the efforts of the different groups. Specific goals for such a council would include, by 1990: 175,000 new jobs and annual job growth of two percent, an unemployment rate 1.5 points below the

national average, and per capita income of at least \$19,400. The need was also expressed for new sources of capital to assist new and expanding businesses, technology transfer, and business retention.

Transportation. The report also discussed the need for improvement in the state's transportation system to continue Colorado's place as a regional transportation center, improve the existing system's efficiency, reduce air pollution, and lessen concerns associated with the movement of hazardous wastes through the state. Among important initiatives mentioned were completion of the new airport, improved mass transit corridors, completion of the beltway system around Denver, exploration of different transportation funding mechanisms, and creation of a state Department of Transportation.

Water. According to the Blueprint, the state's role in the development and enhancement of its water resources is increasing in importance in light of continuing cutbacks in federal funds available for construction and impact mitigation. In this regard, the need for a stable, long-term funding mechanism for water projects was mentioned. Additional projects are needed for the state to capture its water entitlements under its various water compact agreements. The difficulties for the state in these matters also underscore the need to determine project costs and to rank the importance of various projects.

Higher education. The Blueprint cites the increasing importance in today's economy of a well educated workforce endowed with "critical thinking skills." The Colorado Commission on Higher Education (CCHE) is cited in the report as crucial for the improved functioning of the state's system of community colleges and universities. CCHE should work to more clearly define the roles of each institution in the system and establish an accounting system to monitor achievement of performance goals. The commission should also concentrate on reducing costs and redundancies within the system.

K-12 education. According to the Blueprint, "dramatic economic and demographic changes call for a restructuring of the public education system." (p. 19) Increased emphasis must be placed upon retention of students, minimum competency standards, and increased program flexibility. The report recommended the appointment of a task force to reform the state's public school finance system to encourage local innovation through increased flexibility and incentive grants and the equalization of district capital expenditures. The report also suggested the creation of management teams composed of private sector individuals to advise school districts on management practices.

Environment. The environmental recommendations of the Blueprint concentrate on: (1) reducing air pollution in the Denver metropolitan area -- restrictions on woodburning stoves and diesel emissions; (2) transportation and disposal of hazardous wastes -- permitting of a disposal site within the state; and (3) the impact on business of environmental regulations -- cost/benefit analyses of new

environmental regulations and the creation of an Office of Environmental Information to assist businesses with environmental permitting processes.

Health care. The Blueprint notes that the increasing demands on the health care system threatens the system's ability to meet the health care needs of all citizens. In order to limit the impacts on business and for the state to remain economically competitive, health care costs must be contained. Increased emphasis should be placed on market mechanisms for the allocation of health care costs, wellness and preventive care programs, and on reform of judicial and medical insurance aspects of health care. Attempts should also be made to reduce the size of the state's medically indigent population.

Taxation and finance. Concern was expressed in the report regarding the state's high reliance on local taxes, especially property taxes, the number of overlapping taxing jurisdictions within the state, the need for a uniform sales and use tax base, and the number of exemptions from state sales and use taxes. The inability of the state to issue long-term debt for selected capital projects was also cited as a hindrance to effective economic development.

Colorado General Assembly, 1982-1987

In the last five years, the General Assembly has approached the issue of economic development on many different fronts. However, beyond the scope of this report, but directly related to economic development are: a detailed consideration of the state's regulation and yearly review of state-regulated trades and professions; yearly changes in public school and higher education funding; changes in state regulation of banking and insurance companies; tort reform legislation during the 1986 and 1987 sessions (37 bills according to Legislative Drafting Office); efforts to control state spending; and various water projects funded by the Colorado Water Conservation Board Construction Fund.

Enterprise zones. Colorado's enterprise zone program was established in 1986. The state currently has eight enterprise zones, two in urban areas with populations greater than 100,000 and six in rural areas with populations under 50,000. The zones must meet criteria including high unemployment rates, low population growth, or low per capita income. Companies locating in or expanding into an enterprise zone are eligible for four tax incentives -- a state investment tax credit, income tax credits for each new employee, sales and use tax exemptions of machinery and machine tools used within the zone, and income tax credits for company benefit plans created for zone employees. These incentives are intended to lure companies into economically depressed areas.

The number of zones was increased from eight to twelve in 1987, an investment tax credit (to replace that eliminated at the federal level) was added, the new employee credit was expanded to include new

employees hired in subsequent years, and a \$200 credit against the cost of benefit programs was established for zone employees. Local governments were given the power to negotiate with zone businesses regarding local property and sales tax payments.

Colorado Housing and Finance Authority (CHFA). CHFA was created in 1975 to address the housing needs of low- and middle-income citizens. In the intervening years, CHFA's powers and duties have been expanded as a need was seen for increased involvement in the state's economic affairs. In addition to the Department of Local Affairs, CHFA has become the state's major economic development agency. Its programs are financed by authority bond issues.

The financing of industrial and commercial facilities for small- and medium-sized businesses was added in 1982. Providing export finance, shipment quarantees, and advice concerning exports to Colorado firms was added to CHFA's duties in 1984. The authority's investment powers have also been expanded to allow it to engage in higher-risk proposals. In 1987, the General Assembly broadened CHFA's mandate concerning the size and types of businesses it may assist, the types of capital it may provide, and the types of investments it may make in businesses. An economic development fund, capitalized with authority bonds, was also established to pay for the authority's economic development programs. CHFA's bonding authority was also increased from \$1.8 billion to \$2.4 billion.

Transportation and capital construction. The General Assembly created the Regional Transportation District (RTD) in 1969 to create a metropolitan-wide transportation system.

A transit financing commission was created in 1982 to advise RTD in formulating a comprehensive financing plan for the construction of a fixed guideway mass transit system in the metropolitan area. A transit construction authority was established in 1987 to plan, finance, and construct a fixed guideway mass transit corridor between the Denver Technological Center and downtown Denver. The authority was empowered to issue revenue bonds to finance its activities and retire those issues by levying taxes on commercial property and head taxes on employees within the transit system's service area. The Transit Construction Authority is governed by a board appointed by the Governor with the consent of the Senate. RTD was also instructed to plan additional transit corridors throughout the metropolitan area. Completion deadlines are specified for each corridor.

The legislative Capital Development Committee was created in 1985 to establish priorities for the acquisition and controlled maintenance of the state's capital assets. A Capital Construction Fund was also created to provide money for these activities.

In 1986, a bill was enacted to facilitate the construction of the new airport by allowing Denver to annex a portion of Adams County for its site. Gasoline and special fuels taxes were increased to provide funds for additional highway construction. A Highway Legislation

Review Committee was also established to provide guidance and direction to the highway department in the development of the state's highway system.

Noting that the construction of a convention center in Denver will have positive statewide impacts, the General Assembly authorized six yearly installments of \$6 million for the purchase of the building site. A state executive committee was created to monitor the state's role in the project.

Tourism, promotion, and foreign trade. The General Assembly created the Colorado Tourism Board in 1983 to promote travel and tourism in the state. Initially, its activities were financed by a sales tax of one-tenth of one percent on lodging services, food and drink sales, ski lift and admission tickets, admissions for private tourist attractions, car rentals, and bus and sightseeing tours. In 1987, the tax was increased to two-tenths of one percent, and a seven percent diversion to the state's Highway Users Trust Fund was eliminated.

County commissioners were also given the authority to levy a local tax on lodging of not more than two percent to support advertising and marketing of local tourist activities and for the construction of tourist information centers. The revenues would be deposited in a County Lodging Tax Tourism Fund and administered by a three-person panel appointed by the local tourism industry.

The Colorado Promotion Association was created to promote the sale of Colorado products and services. The association consists of dues-paying members interested in such promotional activities and is administered by an 11-member board of state officials and association members.

The Colorado Motion Picture and Television Advisory Commission was established in 1969 to promote Colorado as a location for the production of motion pictures and television films. The commission was reconstituted in 1986 and language added to stress the need for cooperation between the commission and various state agencies.

The Office of Foreign Trade was created in 1983 to aid in the expansion of exports of state products and services and to encourage foreign investment in the state. In 1987, the office was renamed the International Trade Office, moved to the Governor's Office, and authorized to establish foreign trade offices in Taiwan, Korea, Japan, and the People's Republic of China.

Advanced technologies. The Colorado Advanced Technology Institute (CATI) was established in 1983 to improve the quality and quantity of Colorado graduates and faculty in advanced technology fields and to encourage public and private investment and industry cooperation in high technology ventures in the state. In 1987, CATI was authorized to establish a Science and Technology Center for studies in telecommunications, superconductivity, biotechnology,

opto-electronics, aerospace, genetics, and advanced materials. A \$2 million appropriation was made for these programs.

The General Assembly has enacted a series of measures in an attempt to secure the construction of the federal Superconducting Super Collider subatomic particle accelerator project. A \$3 million appropriation was authorized in 1985 for land acquisition for the project. In anticipation of Colorado being selected as the site for this project, the Executive Director of the Department of Local Affairs was authorized to negotiate for, acquire, or condemn property at the chosen site.

Colorado Economic Development Commission (CEDC). CEDC was established to: (1) review the economic needs of various regions of the state; (2) identify various types of businesses in need of assistance; (3) review and make available information concerning the state's industrial opportunities; (4) study the impact of state regulatory and taxing policies; and (5) make recommendations concerning state economic development expenditures. CEDC is governed by a six-member board, four appointed by the Governor, and one each by the Speaker of the House and the President of the Senate (House Bill 1366).

State regulatory functions. The Office of Regulatory Reform (ORR) was created in 1981 to consolidate, simplify, and expedite state permitting processes, and to act as a one-stop permitting office for prospective businesses. In 1982, ORR's powers were expanded by requiring state agencies proposing rules and regulations that may affect small businesses to submit those rules to the office for comment. The office was also charged with notifying affected businesses and recommending changes to or eliminating existing rules. Legislation enacted in 1987 authorized the office to provide and coordinate environmental regulation information, and to assist the joint review process.

A joint review process within the Department of Natural Resources was established to coordinate and facilitate permitting procedures for proposed mining and drilling operations.

Certain aspects of the state's telecommunication's industry were deregulated with the intent of increasing competitive aspects of the industry. Prompt payment procedures were instituted in 1983 to expedite government payments to nongovernmental parties.

The Committee for Sunrise and Sunset Review was created in 1985 to: (1) consolidate the review of continuation or termination of various state divisions, boards, agencies, and advisory committees; and (2) consider the regulation or deregulation of various trades and professions operating in the state.

Training programs. A customized industrial training program was created in 1984 in conjunction with the programs of the State Board of Community Colleges and Occupation Education as an incentive for

companies to expand or locate in the state and to provide job-specific skills training in the state. The Job Diversion Program was created in 1986 to allow counties to coordinate and consolidate employment, training, and supportive services for certain public assistance recipients and applicants.

Education. The Colorado Commission on Higher Education was reconstituted and reorganized in order to streamline and consolidate the operations of the various institutions of higher education in the state.

Tax policy and state appropriations. Major changes to the state's tax code since 1982 were the repeal of the unitary method of apportioning corporate income (1985) and the institution of a flat rate income tax (1987). Many other changes were made to various credits, exemptions, and other provisions of the code to address specific concerns.

The General Assembly also increased appropriations for various economic development programs by over \$9 million. CEDC was given \$4.4 million for its marketing and program activities. The Department of Local Affairs was given \$1.1 million for agricultural development, motion picture and television production, and the state's efforts to secure the federal SSC project. CATI was given an additional \$3.0 million in connection with its Centers of Excellence program (specifically for telecommunications, superconductivity, and opto-electronics).

Business development, advertising, and promotional efforts in the Governor's Office were increased by \$175,000 and the General Assembly retained control of \$660,000 for foreign trade activity. Additional funds were allocated for K-12 education to offset increased property taxes and \$20 million was appropriated to the Colorado Commission on Higher Education for improving laboratory learning facilities and libraries, and for faculty salary increases.

Executive Branch Programs

As stated in the Administration's draft strategy, A Plan For A Competitive Colorado, two primary goals were established: "fundamental changes needed to to be initiated to revive Colorado's economy and, at the same time, it was necessary to send an immediate signal that Colorado was open for business." 25/

A major initiative toward these goals was the reorganization of the administration's approach to economic development. This involved the consolidation of economic development programs within the Department of Local Affairs (DOLA) and improvement in the lines of communication within the administration concerning economic development issues. Overseeing these changes and reporting directly to the Governor is the Chief Executive Officer for Economic Development. Possessing cabinet-level rank, this position works to

insure cooperative relations between the state, its programs, and the private sector. The Executive Director of DOLA administers the state's day-to-day economic development activities.

The Department of Local Affairs was reorganized to place greater emphasis on and coordination of its economic development activities. Directly under the Executive Director are two divisions -- Community Affairs and Economic Development. It is thought that these functions, though not entirely distinct, warranted separation. Additionally, several programs within the Governor's Office -- Office of International Trade, federal Job Training Partnership Act (JTPA) funds, and Colorado FIRST -- were placed under the Division of Economic Development. Economic development programs within the Division of Community Affairs include the department's field service representatives, and financial services offered through the department (federal CDBG and impact assistance funds). The Office of Business Development reports directly to the Executive Director.

Further reorganizational efforts are contemplated, involving additional consolidation of programs in other departments and the creation of a new department solely devoted to economic development. Since the Colorado Constitution limits the number of state departments to 20 and the state has reached that maximum, a new department would require the consolidation or elimination of an existing department. For example, in meeting with the committee, the Governor suggested that the programs of the Department of Regulatory Agencies may be an appropriate choice to move into a new department of economic development. The issue is whether regulation is a consumer protection issue or one of economic development.

Another facet of this reorganization was the creation of the Governor's Economic Development Cabinet Council (EDCC). According to an earlier administration document, Economic Development Agenda, success with the state's economic development efforts depends on the strategic coordination of expenditures and existing state programs. Interagency cooperation for many of the economic development programs is being maintained by EDCC. The council is composed of the directors of eight executive branch agencies and is chaired by the Executive Director of the Department of Local Affairs. Each EDCC member is responsible for a specific set of strategies to promote the state's economy. The departments and a brief explanation of their responsibilities are presented below.

Department of Agriculture. Potential markets for agricultural products should be identified, the potential of alternative crops and food processing feasibility grants should be studied, rural transportation concerns should be identified and addressed, and the lending practices of financial institutions should be examined.

Department of Health. Permitting processes should be streamlined and coordinated, communication should be improved with regulated industries and groups, and public access to environmental information and regulatory requirements should be improved.

Department of Higher Education. State efforts must be continued toward the establishment of a world-class research institute and for the programs of the Colorado Advanced Technology Institute. Funding for state higher education should be brought up to the national median. Program consolidation and efficiency efforts by the Colorado Commission on Higher Education should be supported. Management and efficiency studies should be expanded.

Department of Highways. A stable source of funding should be found for the maintenance and construction of the state's transportation system.

Department of Labor and Employment (DOLE). DOLE should increase its efforts in the areas of labor/management dispute resolution and provide information for employers and employees regarding federal and state labor requirements and job seeking resources. The department's labor force data base should also be made available to private business.

Department of Natural Resources. The Department of Natural Resources' agenda includes improving mining regulation through recodification of state mining laws and the formulation of a state mining policy, assessment of the state's water supply and potential demand, and promotion of the state's recreational areas and public access to state lands.

Department of Regulatory Agencies (DORA). DORA should work with DOLE in simplifying the state's unemployment insurance and workers compensation laws, including vocational rehabilitation.

Department of Revenue (DOR). DOR has been asked to develop a state-by-state and industry tax policy analysis for comparison with Colorado. The intent is to analyze the state's strengths and weaknesses in this area.

In addition to these efforts, the Economic Development Action Council was established to act as the "primary think tank between state government and the private sector" and to develop a broad range of initiatives to improve the state's economy. (25/ at p. 3). The council includes individuals from business and higher education, legislators, and community leaders. As part of its investigations, the council provided oversight to the eight study groups listed below.

Rural Economic Development Task Force;
Technical Advisory Committee;
International Business Development Committee;
Minority Business Opportunities Task Force;
Women's Economic Development Task Force;
Small Business Committee;
Regulatory Review Commission; and
Airport Area Task Force.

The goals of the plan included creating 150,000 new jobs over the next five years, improving the small business failure rate by ten percent in 1988, automating the state's business prospect response system, and increasing Colorado exports by ten percent over the next three years.

Current Economic Development Programs

As noted earlier, Colorado seems to have many of the programs that are deemed necessary for successful state economic development efforts. Issues of increased consolidation and coordination were presented above. The purpose of this section is to review the programs themselves. Please keep in mind that it is difficult to draw clear distinctions between which program is and which is not economic development. A case may be made for the inclusion of many programs that are not presented. The discussion is organized around the following executive branch and quasi-public agencies are listed below.

- Department of Local Affairs;
- Office of the Governor;
- Department of Higher Education - Colorado Advanced Technology Institute;
- Department of Agriculture;
- Department of Labor and Employment;
- Department of Regulatory Agencies - Office of Regulatory Reform and;
- Colorado Housing and Finance Authority.

The final section of this report is concerned with capital construction and local development finance.

Department of Local Affairs

The Department of Local Affairs (DOLA) contains the state's central agency dealing with economic development. Within the department are the Office of Community Economic Development, Office of Small Business, administration of federal Community Development Block Grant funds, Motion Picture and Television Advisory Commission, Colorado Tourism Board, administration of state severance and mineral leasing funds and the Office of Impact Assistance, Office of Rural Job Training, and Office of Rural Development.

The department also provides support services to the Colorado Economic Development Commission, administers the state's enterprise zone program, and performs economic development-related research. DOLA personnel also administer several programs within the Governor's Office. The Executive Director of DOLA is assisted by an advisory commission appointed by the Governor. Additional advisory committees include: impact assistance, CDBG, international trade, the Governor's Small Business Council, and the Colorado Downtown Development Association.

Community economic development. Community economic development programs may encompass several of the department's other capacities toward the goal of providing special assistance to communities for specific projects ranging from construction projects to the establishment of local economic development programs.

Office of Small Business. Small businesses employ just over half of the state's workforce. Firms with fewer than twenty employees represent 86 percent of companies in Colorado. OSB was created to coordinate small business assistance programs, provide management assistance, and operate the state's Small Business Hotline. Twelve small business assistance centers around the state are also planned. These centers will provide such services as one-on-one counseling in small business problems and educational programs.

Recently the Offices of Women's Economic Development and Minority Economic Development were created to expand the economic opportunities for and offer special services to these groups. Full implementation of these two offices is planned for late 1987 - early 1988.

Community Development Block Grant Programs (CDBG). CDBG funds are federal grants for local community activities such as housing, economic development, and public facilities. Distribution of these funds is coordinated through DOLA, though individual projects may be administered by different state agencies.

Motion Picture and Television Advisory Commission. The commission was created in 1969 to promote the use of Colorado as a location for film and television industry operations. It works in association with local film and video firms and acts as a liaison between film projects and potential investors and between projects and local governments. From 1969 through June 1986, film and television projects have contributed \$121 million in expenditures and \$12.9 million in state and local tax revenues.

Colorado Tourism Board. The board is charged with promoting Colorado as a tourist destination, operating state visitors centers, and administering the Colorado Tourism Promotion Fund. The fund is capitalized by a two-tenths of one percent sales tax on tourism-related activities.

Severance Tax Trust Fund. The severance tax represents a return to the state of a portion of the value of extracted minerals. A

portion of total severance receipts are distributed to the state severance tax trust fund; a portion of that fund is then credited to a local government severance tax trust fund in the Department of Local Affairs. Eighty-five percent of the monies in this fund are distributed to those areas socially or economically impacted by mining and oil and gas development activities. The remaining fifteen percent is distributed based on the number of local employees associated with mining activities. Such funds may be used only for the planning, construction, and maintenance of public facilities and for the provision of public services.

Office of Impact Assistance (OIA). OIA administers funds appropriated to the Local Government Severance Tax and Mineral Lease Funds as well as CDBG funds designated for economic development projects. The Executive Director of the Department of Local Affairs may also authorize loans of impact assistance funds for water and sewer projects.

OIA is assisted by the Energy Impact Assistance Advisory Committee and the CDGB Advisory Committee. The former is charged with continually reviewing existing and potential impacts of energy and mineral development, and making recommendations to DOLA regarding assistance to impacted areas, including tax base, housing, and environmental considerations. The advisory committee assists with the distribution of federal CDBG funds.

Office of Rural Job Training. The office is responsible for those areas of the state not designated as a "service delivery area" under JTPA (the Job Training Partnership Act). This area is governed by its own private industry council in conjunction with DOLA.

Office of Rural Development. Formerly the Rural Development Commission, this office is charged with coordinating the activities of the various divisions within DOLA to enhance the development of rural areas of the state.

Office of the Governor

Colorado FIRST Customized Training Program. Colorado FIRST provides new or expanding firms with specific employee training for new positions. Program staff work with company personnel to design the required job skills program. The program is jointly administered by DOLA and the State Board for Community Colleges and Occupational Education in coordination with the Colorado Department of Labor and Employment and the federal Job Training Partnership Act funds (JTPA; 29 USCA 1501) through the Governor's Office.

With JTPA funds, states are required to establish job training programs with goals compatible with state economic development objectives. Geographic areas of the state with populations of 200,000 or more may be designated as service delivery areas. Each area is governed by a private industry council which provides policy guidance

and oversight of the area's job training plan. Because the many programs and agencies involved with job training in the state may confuse companies investigating such services, efforts are underway to establish the Colorado Training Network to provide a more coordinated presentation of these programs.

Office of International Trade. Created in 1983 as the Foreign Trade Office, the Office of International Trade is charged with encouraging, promoting, and assisting the expansion of Colorado international exports, encouraging the location of foreign business facilities, and attracting foreign investment in the state. Other activities include one-on-one counseling, workshops and seminars, and overseas trade show, and trade missions. In 1987, the office was authorized to establish permanent trade offices in Taiwan, Korea, Japan, and the People's Republic of China. To date, offices have been established in Japan and Taiwan.

Office of Business Development. This office is designed to encourage business relocation and expansion in the state by engaging in direct recruitment of specific firms in targeted industries. It also offers services such as community and economic profile data, targeted advertising, and directed research for business prospects.

Department of Higher Education

Colorado Advanced Technology Institute (CATI). CATI was created in 1983 to enhance advanced technology research and education in the state's university system. It is charged with: (1) furthering university research capabilities; (2) attracting superior faculty; (3) encouraging the participation industry in state educational programs; (4) examining the long-range needs of the state in advanced technology fields; and (5) coordinating the state's educational system toward those needs. The commission is also directed to establish Centers of Excellence in specific technology areas. CATI's activities are overseen by a board appointed by the governor and representing advanced technology industry and the state's major universities.

Current CATI activities include:

- Colorado Advanced Materials Institute (AMI) -- an industry/university consortium supporting long-term materials research in materials processing, high-speed electronic materials, amorphous materials, and polymeric materials. To date, AMI has received \$1.8 million in federal research and \$300,000 in industry contracts.
- Colorado Consortium for Optoelectronic Research (CCOR) -- coordinates research at Colorado State University, the University of Colorado - Boulder, and the University of Denver in the areas of optical data transmission, signal processing, and computation. CCOR has received a grant for \$160,000 from the Department of Defense and, based on CCOR

seed grants, has received \$250,000 in matching funds and equipment from industry.

- Colorado Institute for Artificial Intelligence (CIAI) -- a university/industry organization to design and implement an artificial intelligence research applications program. CIAI is in its formative phase.
- SuperNet -- a network linking Colorado's higher education computing services to make supercomputer research more accessible to member universities, private industry, and federal research. Private sector participation has included donations and reduced prices for equipment.
- Geotechnical Centrifuge Facility -- under development since 1983, the centrifuge is used for testing the safety of soil and rock structures (dams, hazardous waste containment). Non-state contributions: \$250,000 from industry commitments total \$250,000; proposed National Science Foundation funding up to \$7.0 million.

Proposed programs include: Colorado Institute for Research in Biotechnology (seed grants awarded; start-up in 1988), a micro-electronics research laboratory (proposed FY 88 budget of \$300,000; \$2.3 million worth of lab equipment donated by industry; \$100,000 in research contracts), and engineering research centers (formative phase; state matching funds for National Science Foundation grants).

SBCCOE. Mention should also be made of the expanding activity of the State System of Community Colleges and Occupational Educational programs. In conjunction with the Governor's Job Training Office (JTPA), DOLA, and DOLE, the programs of SBCCOE have provided training resources tailored to local community and industry needs.

Department of Agriculture

Many of the department's programs concern marketing of the state's agricultural products. These involve participation in international food shows, employing USDA grant to enter overseas markets, coordinating trade leads for international sales, and involvement with the Always Buy Colorado program. Publications include the agricultural statistics, Colorado Trade Directory, and the Farm Fresh Directory.

The department also offers agricultural product processing feasibility grants through CSU. These grants involve private sector matching funds to develop solutions to produce and storage problems. In an attempt to diversify production, programs in alternative crop production have also been initiated. The department coordinates its programs with and receives funds from DOLA, USDA, in addition to the private sector.

Colorado Agriculture Development Authority (CADA). CADA was created as a quasi-governmental corporation in 1981 to address perceived shortages of capital for agricultural businesses. The authority provides low interest financing to farmers, ranchers, and agricultural processors for capital expenditures through the issuance of tax-exempt industrial revenue bonds. It may also provide technical assistance and information, both designed to improve agricultural efficiency and to increase agricultural employment. In 1984, CADA issued \$.5 million in loans; in 1985, CADA issues totaled \$4.4 million.

Department of Labor and Employment

Job Diversion Program. The job diversion program authorizes county commissioners to refer persons applying for AFDC into public or private employment opportunities or to the federal Work Incentive (WIN) program, if eligible. Work experience relating to job-seeking and job-holding skills is provided. Counties may consolidate existing federal, state, and local employment program funds to maximize efficiency and to minimize costs and duplication. Weld County is currently operating a demonstration project.

Job Alternative Program. This program allows counties to coordinate and consolidate existing employment, training, and support services for AFDC applicants and recipients in association with federal JTPA funds. Any plans concerning such consolidations must comply with state and federal regulations and be submitted to the state Department of Social Services for approval. For each household enrolled in the program, the county receives that household's AFDC payments for one year. Further, if the individual is placed in a non-subsidized job, the county receives a bonus payment equal to two months of the individual's AFDC payments.

On-the-Job Training. The Division of Labor and Employment, through the Apprenticeship Council, conducts educational programs for journeymen to keep them abreast of current techniques and materials, and opportunities for advancement. The division also has the authority to establish training programs for displaced workers. The council is also instructed to cooperate with and advise SBCCOE, the department, and other government agencies.

Office of Regulatory Reform

The Office of Regulatory Reform was created in 1981 to consolidate, simplify, and expedite the business permitting system in Colorado. It is designed to provide comprehensive information on federal, state, and local business requirements, as well as to assist businesses during the early stages of set-up, and to review rules and regulations promulgated by other state agencies that may affect small business.

Colorado Housing and Finance Authority

The housing authority was created in 1973 as a quasi-governmental agency governed by a board of directors composed of the state auditor, a member of the General Assembly, and seven members appointed by the Governor with the consent of the Senate. As the name implies, the original function of CHFA was to assist housing markets in the construction of housing for low- and moderate-income persons. It does so through the issuance of revenue bonds to create loan funds and to purchase housing loans from other lenders.

The authority's duties were expanded in 1982 to include broader economic development concerns. The programs created in response are detailed below.

- ACCESS Program. In conjunction with the U.S. Small Business Administration's 503/504 loan program, ACCESS is designed for real estate and equipment projects that meet criteria for local certified development companies (CDCs). (CDCs are certified by SBA to provide economic development financing to targeted areas. The SBA approves the CDCs loans and acts as an agent to secure the funds CDC requires.) The SBA provides 40 percent of the funding, a lender 50 percent, and the business owner the remaining ten percent. The loan is secured by a first lien. Through ACCESS, CHFA will participate in up to 90 percent of the lender's loan. The program began in 1987. Colorado's Public Employees' Retirement Association also invest in the program.
- Quality Investment Capital (QIC) Program. The QIC program provides a safe investment for state funds in federally guaranteed Small Business Administration funds. These loans provide small businesses with long term, fixed interest loans (up to \$600,000) at below market rates. From 1984 to mid-1987, 126 loans totalling \$17.6 million have been issued. According to CHFA, over 1,003 jobs have been retained and 388 jobs created due to QIC.
- FLEX Fund Program. CHFA has set aside \$1.0 million to purchase up to 75 percent of local revolving loan fund loans. These loans are normally more risky than conventional loans. Local funds are expected to service the loan and to use the CHFA funds to continue their economic development financing activities. This program began in January, 1987.
- Export Program. CHFA also administers the Colorado Export Credit Insurance Program as a way to insure against political and economic risks associated with export activities. This program is operated in

association with the Export-Import Bank, insuring shipments for up to 180 days. Either the exporter may be the beneficiary or he may assign that interest to a lender as security for export financing. Since 1984, 23 shipments worth \$2.1 million have been insured.

Capital Construction and Development Finance

Capital Development Committee. The Capital Development Committee is a joint legislative committee established in 1985 charged with studying and ranking the capital construction, controlled maintenance, and capital acquisition needs of the state and forecasting those requirements for future years. Membership is composed of two majority party members and one minority party member from each house. The committee functions on an ongoing basis and makes yearly recommendations to the Joint Budget Committee.

Highway Users Tax Fund (HUTF). HUTF derives its revenues from motor fuel excise taxes, vehicle registration fees, and ton- and passenger-mile taxes. These revenues are used to acquire rights-of-way, engage in highway construction and maintenance, and administer the state's road system. Moneys are allocated proportionally to the state and among the various counties and municipalities. The Colorado Highway Commission has the authority to issue revenue anticipation warrants from the fund to finance construction projects.

Highway Legislation Review Committee. The review committee was reestablished in 1986 to provide legislative oversight to highway planning in the state. It may: review any phase of state department of highway operations; conduct post-operation reviews and audits; require the department to adopt five-, ten-, and fifteen-year highway development plans. The committee has eleven members, five appointed by the Governor and three from each house.

Colorado Water Conservation Board Construction Fund. The water conservation board is an agency of state government created to protect and develop the water resources of the state. The board's construction fund is capitalized by user charges and state appropriations.

Capital Construction Fund. The Capital Construction Fund was created in 1959 to finance the acquisition of land and buildings, demolition and renovation, site improvement, and planning and consulting services associated with capital construction projects. The fund is capitalized with state General Fund revenues and its funds are disbursed by the General Assembly as needed.

Quasi-Governmental Development Authorities

Because of constitutional prohibitions against debt financing by the state, many of its long-term financing mechanisms are provided by the quasi-governmental agencies discussed below.

Colorado Water Resources and Power Development Authority. The authority was created to preserve, manage, and promote beneficial use of the state's water resources. The authority is a quasi-governmental agency governed by a board of directors appointed by the Governor with the consent of the Senate. The authority may issue bonds based on revenues earned from power generation, water sales, and other state and federal aid.

Postsecondary Educational Facilities Authority (PEFA). PEFA was created in 1981 as a means to lend money to the state's postsecondary institutions and to help those institutions lease, acquire, construct or rehabilitate needed facilities. To finance its activities, PEFA relies on state and federal grants and appropriations, and on revenue bond issues based on rents, lease and mortgage payments, or sales of facility properties. It may also use its funds to retire outstanding obligations of participating institutions. The term of the bonds may not exceed 40 years.

State-supported institutions requesting PEFA funds in excess of \$1.0 million must have the expenditure authorized by a bill passed by the General Assembly and the terms of the project approved by the Colorado Commission on Higher Education. PEFA is governed by a seven-member board appointed by the Governor with the consent of the Senate.

Colorado Health Facilities Authority. This authority was created in 1977 to assist health facilities in the state to lease, acquire, construct, or rehabilitate health facilities, and to retire or refinance existing debt. The powers and duties of the authority are essentially the same as those of PEFA. The authority is governed by a seven-member board appointed by the Governor with the consent of the Senate.

Local Government Development Finance

The Colorado Constitution specifies that any issuance of general obligation (GO) debt issued by any political subdivision of state must be approved by the qualified, taxpaying electors of that subdivision. The procedures for such issues are addressed in statute.

Municipalities. Incorporated municipalities may issue GO bonds up to an aggregate value of three percent of the actual value of taxable property within their jurisdictions. Except for those bonds issued for water supply projects, the term of such bonds may not exceed 30 years. Cities may also organize housing authorities to address housing shortages. These authorities may issue bonds based on

anticipated revenues from authority projects (e.g., rents) and other sources (e.g., federal government aid). Bond terms may not exceed 60 years.

Counties. Counties may issue GO bonds to finance the acquisition and maintenance of public buildings, roads, and mass transportation and airport facilities. The terms of such issues may not exceed twenty years. Counties may also establish capital improvement trust funds as a source of direct appropriations for approved projects or to retire non-GO obligations issued to finance approved projects. Counties may also establish county housing authorities to finance shelter for agricultural and other low income workers. In terms of debt financing, county housing authority powers are similar to those of municipal housing authorities as noted in the preceding paragraph.

Development revenue bonds (DRBs). Counties and municipalities have the power to issue DRBs to acquire, finance, or improve properties for the purpose of promoting industry and maintaining a balanced and stable economy. Eligible projects include: housing; hospitals; manufacturing, commercial or agricultural facilities; pollution control equipment; water supply, and sewage and waste treatment facilities; and airports. As the name implies, such bonds must be retired from revenues generated by the project being financed. Maturity may not exceed 40 years.

Passage of a resolution by the board of county commissioners or a municipal ordinance is required for the issuance of DRBs. The aggregate value of local government tax-exempt bonds are subject to ceilings established in federal law based on a special dollar value per capita. Colorado statute allocates this total value among bond issuing authorities at the state and local level.

Tax increment financing. Tax increment financing (TIF) employs changes in an area's tax base to finance or retire bonds issued to cover the cost of redeveloping that area. The tax base of an area -- property taxes or sales taxes (or both) -- is established at the time the TIF district is designated. Any growth in the tax base beyond the initially designated level is paid into a special fund used to retire TIF bonds.

In Colorado, Downtown Development Authorities (DDAs) and Urban Renewal Authorities (URAs) may engage in TIF. The former must request the governing body of the municipality to issue the tax increment bonds while the latter may issue the bonds directly. Criteria are specified in statute that determine if an area is eligible for TIF. The process by which a TIF district is designated and the planning process for its redevelopment are also specified. TIF moneys may be used to acquire land, demolish or rehabilitate existing structures, and install or reconstruct streets, utilities, parks, or other improvements.

ENDNOTES

- 1/ The White House Conference on Small Business. Final Recommendations. 1986, pp. 2-3.
- 2/ Dennis, William J., Jr., Small Business Problems and Priorities. Institute for Enterprise Advancement. 1986, pp. 6-8. The IEA is an affiliate of the National Federation of Independent Business.
- 3/ Ripy, Thomas B. and Morris, Marie B., History and Continuing Issues of Unrelated Trade or Business Income Tax: Sections 511 - 513 of the Internal Revenue Code. Congressional Research Service, The Library of Congress. June 4, 1987, pp. 1-2.
- 4/ Competition Between Taxable Businesses and Tax-Exempt Organizations. Briefing Report to the Joint Committee on Taxation, U.S. Congress. United States General Accounting Office, GAO/GGD-87-40BR. February 1987, p. 28.
- 5/ Independent Sector's Response to the GAO Report, Competition Between Taxable Businesses and Tax-Exempt Organizations. March 10, 1987, p. 1. The Independent Sector describes itself as "a national forum to encourage giving, volunteering and not-for-profit initiative."
- 6/ Chi, Keon S., "Privatization: A public option?" State Government News. The Council of State Governments. June 1985, p. 5.
- 7/ Hatry, H., A Review of Private Approaches for Delivery of Public Services. The Urban Institute. 1983, p. 12.
- 8/ Savas, E. S., Privatizing the Public Sector. Chatham House Publishers, Inc. 1982, pp. 91-92. E.S. Savas is a former professor of public systems management at the Graduate School of Business, Columbia University, and former Assistance Secretary for Policy Development and Research, United States Department of Housing and Urban Development.
- 9/ The Role of Privatization in Florida's Growth. Law and Economics Center, University of Miami, and the Local Government Center, Reason Foundation. 1987. The Reason Foundation describes itself as a nonprofit, tax-exempt educational organization. The study was the first research project funded by The Florida Chamber of Commerce Foundation and The Florida Council of 100.
- 10/ Chi, Keon S., "Private-Public Alliances Grow," State Government News. The Council of State Governments. January 1986, p. 13.
- 11/ Venture Capital and Innovation. A Study Prepared for the Use of the Joint Economic Committee, Congress of the United States. U.S. Government Printing Office. December 28, 1984, p. 25.
- 12/ Technology, Innovation, and Regional Economic Development. Office of Technology Assessment, Congress of the United States. July 1984, p. 42.
- 13/ Building the New Economy: States in the Lead. D.R. Jones, ed. The Corporation for Enterprise Development. 1986, pp. 1-23.

- 14/ Kieschnick, Michael, "States Can Increase Capital Flows," Ways and Means. The National Center for Policy Alternatives. Spring 1987.
- 15/ Bettger, Gary, "State Venture Capital Initiatives," State Legislative Report. National Conference of State Legislatures. Vol. 11, No. 2; February 1986, p. 8.
- 16/ Leadership for Dynamic State Economies. A Statement by the Research and Policy Committee of the Committee for Economic Development. 1986, p. 20. CED is an independent, nonprofit research and educational organization composed of over 200 business executives and educators.
- 17/ Drucker, Peter F., "The Changed World Economy," Foreign Affairs. Vol. 64, No. 4; Spring 1986, p. 787.
- 18/ Making the Grade. The Development Report Card for the States. The Corporation for Enterprise Development with Mt. Auburn Associates and the Institute on Taxation and Economic Policy. March 1987, p. 8 (emphasis in original).
- 19/ Tucker, Marc S., "State Economic Development and Education," Living on the Leading Edge. State Policy Issues for Education and Economic Development in a Global Economy. Prepared for The National Conference of Lieutenant Governors by The Council of State Governments. 1986, p. 6.
- 20/ MacManus, Susan A., "Linking State Employment and Training and Economic Development Programs: A 20-State Analysis," Public Administration Review. November/December 1986, p. 648.
- 21/ Vaughan, R., Pollard, R., and Dyer, B., The Wealth of States Policies for a Dynamic Economy. Council of State Planning Agencies. May 1986, p. 33. CSPA is affiliated with the National Governors' Association and is comprised of planning and policy advisers to the nation's governors.
- 22/ Reinshuttle, Robert J. Infrastructure -- A Bibliography. The Council of State Governments. 1983, p. 2.
- 23/ Blueprint for Colorado A Plan for Growth from the Business Community. Colorado Association of Commerce and Industry Educational Foundation. January 1987, p. 1. According to Blueprint, the foundation was established in 1984 "to fill the need for educational inquiry of specific interest to the Colorado business community." (p. 33)
- 24/ A Plan For A Competitive Colorado. Discussion Draft, Office of the Governor. November 5, 1987; p. 1.
- 25/ Strategic Plan for Economic Development. Office of the Governor. January 12, 1987; p. 3.

BILL 1

A BILL FOR AN ACT

1 CONCERNING STATE GOVERNMENT COMPETITION WITH PRIVATE
2 ENTERPRISE.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Prohibits state agencies from manufacturing, selling, or distributing any good or service to the public which good or service is also offered by private enterprise unless such manufacture, sale, or distribution is specifically authorized by law. Allows competition in specified circumstances.

Prohibits institutions of higher education from providing goods, services, or facilities which are available from private enterprise to persons other than students, faculty, staff, and invited guests, unless the provision of such goods, services, or facilities is necessary for the educational experience or unless such provision fulfills the public service mission of the institution of higher education.

Requires the governing boards of institutions of higher education to adopt procedures to regulate the competition between private enterprise and the institutions. Establishes a procedure through which aggrieved persons may file a complaint with the commission on higher education.

Creates the private enterprise review board for the purpose of hearing complaints from private enterprise regarding competition with state agencies. Requires the board to submit a report of its activities to the general assembly and to the governor.

3 Be it enacted by the General Assembly of the State of Colorado:

1 SECTION 1. Title 24, Colorado Revised Statutes, 1982
2 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW
3 ARTICLE to read:

4 ARTICLE 113

5 State Government Competition
6 with Private Enterprise

7 24-113-101. Legislative declaration. The general
8 assembly hereby finds and declares that state government
9 competes with the private sector when state government
10 provides certain goods and services to the public.
11 Recognizing this problem, it is the intent of the general
12 assembly and the purpose of this article to provide additional
13 economic opportunities to private industry and to regulate
14 competition by state agencies, including institutions of
15 higher education. It is the further intent of the general
16 assembly that issues and complaints regarding competition
17 between state government and nonprofit organizations and the
18 private sector be addressed through a private enterprise
19 review board, which board shall be created in this article.

20 24-113-102. Definitions. As used in this article,
21 unless the context otherwise requires:

22 (1) "Commission" means the Colorado commission on higher
23 education.

24 (2) "Institution of higher education" means a
25 state-supported college, university, or community college.

26 (3) "Invited guests" means persons who enter onto a
27 campus for an educational, research, or public service

1 activity and not primarily to purchase or receive goods and
2 services not related to the educational, research, or public
3 service activity for which such persons enter onto the campus.

4 (4) "Nonprofit organization" means a nonprofit
5 religious, charitable, or educational organization which is
6 entitled to tax exemption under section 501 (c) (3) of the
7 federal "Internal Revenue Code of 1986", and any amendments
8 thereto.

9 (5) "Private enterprise" means an individual, firm,
10 partnership, joint venture, corporation, association, or any
11 other legal entity engaging in the manufacturing, processing,
12 sale, offering for sale, rental, leasing, delivery,
13 dispensing, distributing, or advertising of goods or services
14 for profit.

15 (6) "State agency" means a department, office,
16 commission, institution, board, or other agency of state
17 government.

18 24-113-103. State competition with private enterprise
19 prohibited - exceptions. (1) A state agency shall not engage
20 in the manufacturing, processing, sale, offering for sale,
21 rental, leasing, delivery, dispensing, distributing, or
22 advertising of goods or services to the public which are also
23 offered by private enterprise unless specifically authorized
24 by law.

25 (2) A state agency shall not offer or provide goods or
26 services to the public for or through another state agency or
27 a local agency, including by intergovernmental or interagency

1 agreement, in violation of this section.

2 (3) The restrictions on competition with private
3 enterprise contained in this section do not apply to:

4 (a) The development, operation, and management of state
5 parks, historical monuments, and hiking or equestrian trails;

6 (b) Correctional industries established and operated by
7 the department of corrections pursuant to article 24 of title
8 17, C.R.S., if the prices charged for products sold by the
9 correctional industries are not less than the actual cost of
10 producing and marketing the product plus a reasonable
11 allowance for overhead and administrative costs;

12 (c) The Colorado tourism board;

13 (d) Printing and distributing information to the public
14 if the state agency is otherwise authorized to do so, and
15 printing or copying public records or other material relating
16 to the state agency's public business if the costs of such
17 printing, copying, and distribution are recovered through fees
18 and charges;

19 (e) The department of public safety;

20 (f) The construction, maintenance, and operation of
21 state transportation facilities; and

22 (g) The provision of free medical services or equipment
23 to indigents in association with a community service health
24 program.

25 (4) The provisions of section 24-113-104 and not the
26 restrictions contained in subsection (1) of this section shall
27 apply to institutions of higher education.

1 24-113-104. Competition with private enterprise by
2 institutions of higher education - rules - complaints.

3 (1) Institutions of higher education shall not, unless
4 specifically authorized by statute:

5 (a) Provide to persons other than students, faculty,
6 staff, and invited guests goods, services, or facilities that
7 are available from private enterprise, unless the provision of
8 the goods, service, or facility offers a valuable educational
9 or research experience for students as a part of their
10 education or fulfills the public service mission of the
11 institution of higher education; however, institutions of
12 higher education may sponsor or provide facilities for
13 recreational, cultural, and athletic events or facilities for
14 food services and sales. In determining whether the provision
15 of a good or service pursuant to this paragraph (a) offers a
16 valuable educational or research experience, the following
17 criteria shall be considered:

18 (I) Whether the provision of the good, service, or
19 facility is substantially and directly related to the
20 instructional, research, or public service mission of the
21 institution of higher education;

22 (II) Whether the good, service, or facility is
23 practically available in the private marketplace;

24 (III) Whether there is a demand in the public for the
25 good, service, or facility; and

26 (IV) Whether the price charged for the good, service, or
27 facility reflects the direct and indirect costs and overhead

1 costs of providing such good, service, or facility and the
2 price in the private marketplace.

3 (b) Enter competitive bidding for rendering any goods or
4 services unless a clear educational or research advantage
5 would accrue to this state by the institution of higher
6 education rendering of goods or services. Any such bid shall
7 fairly and fully allocate all direct and indirect costs unless
8 the funding agency or sources provide for or require all
9 bidders to use a specific procedure or formula for allocating
10 costs.

11 (c) Provide goods, services, or facilities for or
12 through another state agency or a local agency, including by
13 intergovernmental or interagency agreement, which, if provided
14 directly by the contractor, would be in violation of this
15 section.

16 (2) Institutions of higher education shall not provide
17 to students, faculty, staff, or invited guests any goods,
18 services, or facilities that are practically available from
19 private enterprise except as authorized by the commission. In
20 determining whether the provision of a good, service, or
21 facility pursuant to this subsection (2) shall be authorized,
22 the commission shall consider the following criteria:

23 (a) Whether the provision of the good, service, or
24 facility is substantially and directly related to the
25 instructional, research, or public service mission of the
26 institution of higher education;

27 (b) Whether the provision of the good, service, or

1 facility is necessary or convenient for the campus community;

2 (c) Whether the price charged for the good, service, or

3 facility reflects the direct and indirect costs and overhead

4 costs of providing such good, service, or facility; and

5 (d) Whether measures have been taken to ensure that the

6 provision of a good, service, or facility pursuant to this

7 subsection (2) is only for students, faculty, staff, or

8 invited guests and not for the general public.

9 (3) The commission may adopt and implement rules to

10 provide for the disposal by sale of products and by-products

11 which are an integral part of research or instruction

12 conducted by the institution of higher education under its

13 jurisdiction if the products and by-products are not sold to a

14 retailer or sold at retail to the public by the particular

15 institution of higher education unless the sale is an integral

16 part of the particular research project or instructional

17 program or there is no other practical way of disposing by

18 sale of the products or by-products, and if the products or

19 by-products are sold at their market value.

20 (4) The commission, in cooperation with Colorado

21 business organizations and representatives of the Colorado

22 small business community, shall adopt procedures to:

23 (a) Regulate competition with private enterprise and

24 ensure compliance with this section;

25 (b) Regulate use of facilities by students, faculty,

26 staff, invited guests, and the general public;

27 (c) Promptly hear and resolve complaints lodged under

1 this section. Such procedures shall include provisions for an
2 expedited hearing process if it is determined that the alleged
3 competition may cause severe financial hardship on the person
4 filing the complaint.

5 (5) Any person aggrieved by a violation of this section
6 may file a complaint with the commission. The commission
7 shall transmit a copy of a complaint received pursuant to this
8 subsection (5) to the private enterprise review board created
9 in section 24-113-105. The commission shall hear complaints
10 made pursuant to this subsection (5) within sixty days and
11 shall render its decision within thirty days after the
12 hearing. A person does not have standing to challenge
13 violations of this section in the courts of this state until
14 the person has first made a complaint to the commission and
15 has received the commission's decision.

16 (6) This section shall not apply to:

17 (a) The Colorado health sciences center operated by the
18 university of Colorado, except in those cases in which the
19 health sciences center provides prosthetic or medical devices,
20 or services related to such devices, and a surgical or medical
21 procedure is not involved in the application of the device;

22 (b) The provision of free medical services or equipment
23 to indigents in association with a community service health
24 program;

25 (c) Public service radio and television stations
26 licensed to a governing board or to the institution of higher
27 education under its jurisdiction.

1 (7) The exceptions to the restrictions on competition
2 with private enterprise in subsections (1), (3), and (6) of
3 this section are subject to review by the private enterprise
4 review board in accordance with section 24-113-105.

5 24-113-105. Private enterprise review board - members -
6 terms - duties. (1) (a) There is hereby created the private
7 enterprise review board, which board shall consist of eleven
8 regular members and four advisory members. Of the eleven
9 regular members, one shall be the executive director or chief
10 administrative officer of one of the principal departments and
11 shall be appointed by the governor, one shall be appointed by
12 the state board for community colleges and occupational
13 education, one shall be appointed by the commission, two shall
14 represent nonprofit organizations incorporated in Colorado and
15 shall be appointed by the governor, and the remaining six
16 members shall be engaged in private enterprise with at least
17 three members from businesses with twenty or fewer employees.
18 The speaker of the house of representatives, the president of
19 the senate, and the governor shall each appoint two of the six
20 members engaged in private enterprise, and of the two
21 appointments at least one shall be a representative of the
22 small business community. Two of the advisory members shall
23 be from the house of representatives and shall be appointed by
24 the speaker of the house. One of the advisory members from
25 the house of representatives shall be a member of the house
26 appropriations committee. Two of the advisory members shall
27 be from the senate and shall be appointed by the president of

1 the senate. One of the advisory members from the senate shall
2 be a member of the senate appropriations committee.

3 (b) Regular and advisory members of the board shall
4 serve terms of two years. In the event that any member is
5 unable to complete the term, a replacement member shall be
6 appointed for the remainder of the unexpired term by the
7 person who made the original appointment.

8 (c) Members of the board shall not receive compensation,
9 but shall be reimbursed for all reasonable and necessary
10 expenses incurred in fulfilling their duties under this
11 section.

12 (2) The board shall select a chairman from among its
13 members engaged in private enterprise and it shall meet at
14 least four times each year at the state capitol building. The
15 board may hold any additional meetings deemed necessary by the
16 chairman.

17 (3) (a) Any person who believes that a state agency or
18 nonprofit organization has violated any provision of this
19 article may file a written complaint with the board stating
20 the grounds for such complaint. The board shall receive such
21 written complaints and shall transmit such complaints to the
22 state agency or nonprofit organization which is alleged in the
23 complaint to be in violation. The board shall not consider a
24 complaint relating to an institution of higher education.

25 (b) The state agency or nonprofit organization named in
26 the complaint shall respond to the board in writing within
27 forty-five days after receipt of a complaint. The state

1 agency or nonprofit organization shall either admit or deny
2 the allegations made in the complaint and it shall indicate
3 whether remedial action will be taken.

4 (c) The board shall hold public hearings on complaints
5 and it shall determine whether the state agency or nonprofit
6 organization is in violation of the provisions of this
7 article.

8 (d) Within sixty days after the response, the board
9 shall issue a report of its findings to the complainant and
10 the state agency or nonprofit organization.

11 (4) The board shall transmit a complete report of each
12 of its meetings to the joint budget committee of the general
13 assembly, the executive director of the department of revenue,
14 the state auditor, and to the governor. The reports shall
15 include recommendations for remedies of violations of this
16 article as well as findings regarding the exceptions to the
17 prohibitions established in this article.

18 (5) At the request of the board, the office of
19 regulatory reform shall provide such staff support as is
20 necessary for the board to carry out its duties pursuant to
21 this section. The state auditor shall provide performance
22 audit information to the board and the department of revenue
23 and the office of the secretary of state shall provide
24 information relating to nonprofit organizations.

25 SECTION 2. Part 9 of article 34 of title 24, Colorado
26 Revised Statutes, 1982 Repl. Vol., as amended, is amended BY
27 THE ADDITION OF A NEW SECTION to read:

1 24-34-914. Contracts with private enterprise. (1) Any
2 business which desires to provide a good or service to this
3 state shall submit a proposal with the office.

4 (2) The office shall send a copy of the proposal to the
5 state agency which provides goods or services similar to the
6 goods or services offered in the proposal. The state agency
7 to which the proposal is sent shall conduct an analysis of the
8 proposal to determine whether the good or service can be
9 provided by the business at a cost which is less than that of
10 the state agency. The state agency shall send a copy of its
11 analysis of the proposal to the office.

12 (3) The office shall send copies of the analysis to the
13 business which submitted the proposal and to the director of
14 the division of commerce and development in the department of
15 local affairs. The office shall review and evaluate the
16 analysis in consultation with the director of the division of
17 commerce and development. The office may hold public hearings
18 as a part of the evaluation process.

19 (4) The office, based on its review and evaluation of
20 the analysis and its consultation with the affected state
21 agency, shall make recommendations to the joint budget
22 committee of the general assembly and to the office of state
23 planning and budgeting. Such recommendations shall include a
24 conclusion as to whether the good or service offered in the
25 proposal can be provided by the business submitting the
26 proposal at a cost which is less than that of the state
27 agency.

1 SECTION 3. Effective date - applicability. This act
2 shall take effect July 1, 1988, and shall apply to acts
3 committed on or after said date.

4 SECTION 4. Safety clause. The general assembly hereby
5 finds, determines, and declares that this act is necessary
6 for the immediate preservation of the public peace, health,
7 and safety.

BILL 2

A BILL FOR AN ACT

1 CONCERNING STATE AGENCY RULE-MAKING PROCEDURES.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Requires state agencies to mail a notice of proposed rule-making to all persons who have requested such notification. Authorizes the adoption of emergency rules where the adoption of such rules is necessary to comply with a federal law or regulation.

Requires that fiscal impact statements include a cost-benefit analysis of the impact of the rule. Establishes specified criteria for the adoption of a proposed rule by an agency. Requires agencies to maintain copies of proposed rules, minutes of meetings, and attorney general opinions and to make such material available for public inspection.

Requires agencies to issue a regulatory analysis of proposed rules. Specifies what the analysis must contain and requires the analysis to be made available to the public.

Requires agencies to maintain a record of the rule-making proceedings, which record shall be open to public inspection.

2 Be it enacted by the General Assembly of the State of Colorado:

3 SECTION 1. 24-4-103 (3) and (6), Colorado Revised
4 Statutes, 1982 Repl. Vol., are amended to read:

5 24-4-103. Rule-making - procedure. (3) (a) Notice of
6 proposed rule-making shall be published as provided in

1 subsection (11) of this section and shall state the time,
2 place, and nature of public rule-making proceedings which
3 shall not be held less than twenty days after such
4 publication, the authority under which the rule is proposed,
5 and either the terms or the substance of the proposed rule or
6 a description of the subjects and issues involved.

7 (b) EACH RULE-MAKING AGENCY SHALL MAINTAIN A LIST OF ALL
8 PERSONS WHO REQUEST NOTIFICATION OF PROPOSED RULE-MAKING.
9 WITHIN THREE DAYS AFTER PUBLICATION OF PROPOSED RULES IN THE
10 COLORADO REGISTER, THE AGENCY SHALL MAIL THE NOTICE OF
11 PROPOSED RULE-MAKING TO ALL PERSONS ON SUCH LIST.

12 (6) A temporary or emergency rule may be adopted without
13 compliance with the procedures prescribed in subsection (4) of
14 this section and with less than the twenty days' notice
15 prescribed in subsection (3) of this section (or where
16 circumstances imperatively require, without notice) where an
17 agency finds that immediate adoption of the rule is
18 imperatively necessary TO COMPLY WITH A FEDERAL LAW OR
19 REGULATION OR for the preservation of public health, safety,
20 or welfare and compliance with the requirements of this
21 section would be contrary to the public interest. Such
22 findings and a statement of the reasons for the action shall
23 be published with the rule. A temporary or emergency rule
24 shall become effective on adoption or on such later date as is
25 stated in the rule, shall be published promptly, and shall
26 have effect for not more than three months from the adoption
27 thereof or for such shorter period as may be specifically

1 provided by the statute governing such agency, unless made
2 permanent by compliance with subsections (3) and (4) of this
3 section.

4 SECTION 2. 24-4-103 (4), Colorado Revised Statutes, 1982
5 Repl. Vol., as amended, is REPEALED AND REENACTED, WITH
6 AMENDMENTS, to read:

7 24-4-103. Rule-making - procedure. (4) (a) At the
8 place and time stated in the notice, the agency shall hold a
9 public hearing at which it shall afford interested persons an
10 opportunity to submit written data, views, or arguments and to
11 present the same orally unless the agency deems it
12 unnecessary. The agency shall consider all such submissions.
13 Any proposed rule or revised proposed rule by an agency which
14 is to be considered at the public hearing, together with a
15 proposed statement of basis, specific statutory authority,
16 purpose, proposed fiscal impact statement, and the regulatory
17 analysis required in subsection (4.5) of this section, shall
18 be made available to any person at least five days prior to
19 said hearing. On and after July 1, 1988, the proposed fiscal
20 impact statement shall include a description and
21 quantification of the relative costs and benefits, direct and
22 indirect, which would be experienced by persons,
23 organizations, and governmental entities from the
24 implementation of the rule. Any rule promulgated by any
25 agency without a proposed fiscal impact statement which
26 complies with the requirements of this subsection (4) shall be
27 void. The rules promulgated by the agency shall be based on

1 the record, which shall consist of proposed rules, evidence,
2 exhibits, and other matters presented or considered, matters
3 officially noticed, rulings on exceptions, any findings of
4 fact and conclusions of law proposed by any party, and any
5 written comments or briefs filed.

6 (b) All proposed rules shall be reviewed by the agency.
7 No rule shall be adopted unless:

8 (I) The record of the rule-making proceeding
9 demonstrates the need for the regulation;

10 (II) The proper statutory authority exists for the
11 regulation;

12 (III) The regulation is clearly and simply stated so
13 that its meaning will be understood by any party required to
14 comply with the regulation;

15 (IV) The regulation does not conflict with other
16 provisions of law; and

17 (V) The duplication or overlapping of regulations is
18 explained by the agency proposing the rule.

19 (c) Rules, as finally adopted, shall be consistent with
20 the subject matter as set forth in the notice of proposed
21 rule-making provided in subsection (11) of this section.
22 After consideration of the relevant matter presented, the
23 agency shall incorporate by reference on the rules adopted a
24 written concise general statement of their basis, specific
25 statutory authority, and purpose. The written statement of
26 the basis, specific authority, and purpose of a rule which
27 involves scientific or technological issues shall include a

1 detailed, analytical evaluation of the scientific or
2 technological rationale justifying the rule. Each agency
3 shall maintain a copy of its currently effective rules and the
4 current status of each published proposal for rules and
5 minutes of all its action upon rules, as well as any attorney
6 general's opinion rendered on any adopted or proposed rule.
7 Such materials shall be available for inspection by any person
8 during regular office hours.

9 (d) Within one hundred eighty days after the last public
10 hearing on the proposed rule, the agency shall adopt a rule
11 pursuant to the rule-making proceeding or terminate the
12 proceeding by publication of a notice to that effect in the
13 Colorado register.

14 SECTION 3. 24-4-103, Colorado Revised Statutes, 1982
15 Repl. Vol., as amended, is amended BY THE ADDITION OF THE
16 FOLLOWING NEW SUBSECTIONS to read:

17 24-4-103. Rule-making - procedure. (4.5) (a) The
18 agency shall issue a regulatory analysis of a proposed rule.
19 The regulatory analysis shall contain:

20 (I) A description of the classes of persons who will be
21 affected by the proposed rule, including classes that will
22 bear the costs of the proposed rule and classes that will
23 benefit from the proposed rule;

24 (II) A description of the probable quantitative and
25 qualitative impact of the proposed rule, economic or
26 otherwise, upon affected classes of persons;

27 (III) The probable costs to the agency and to any other

1 agency of the implementation and enforcement of the proposed
2 rule and any anticipated effect on state revenues;

3 (IV) A comparison of the probable costs and benefits of
4 the proposed rule to the probable costs and benefits of
5 inaction;

6 (V) A determination of whether there are less costly
7 methods or less intrusive methods for achieving the purpose of
8 the proposed rule; and

9 (VI) A description of any alternative methods for
10 achieving the purpose of the proposed rule that were seriously
11 considered by the agency and the reasons why they were
12 rejected in favor of the proposed rule.

13 (b) Each regulatory analysis shall include
14 quantification of the data to the extent practicable and shall
15 take account of both short-term and long-term consequences.

16 (c) The regulatory analysis shall be available to the
17 public at least five days prior to the rule-making hearing.

18 (d) If the agency has made a good faith effort to comply
19 with the requirements of paragraphs (a) to (c) of this
20 subsection (4.5), the rule shall not be invalidated on the
21 ground that the contents of the regulatory analysis are
22 insufficient or inaccurate.

23 (8.1) (a) An agency shall maintain an official
24 rule-making record for each proposed rule for which a notice
25 of proposed rule-making has been published in the Colorado
26 register. The rule-making record and any materials
27 incorporated by reference in the record shall be available for

1 public inspection.

2 (b) The agency rule-making record shall contain:

3 (I) Copies of all publications in the Colorado register
4 with respect to the rule or the proceeding upon which the rule
5 is based;

6 (II) Copies of any portions of the agency's public
7 rule-making docket containing entries relating to the rule or
8 the proceeding upon which the rule is based;

9 (III) All written petitions, requests, submissions, and
10 comments received by the agency and all other written
11 materials considered by the agency in connection with the
12 formulation, proposal, or adoption of the rule or the
13 proceeding upon which the rule is based;

14 (IV) Any official transcript of oral presentations made
15 in the proceeding upon which the rule is based or, if not
16 transcribed, any tape recording or stenographic record of
17 those presentations and any memorandum prepared by a presiding
18 official summarizing the contents of those presentations;

19 (V) A copy of any regulatory analysis prepared for the
20 proceeding upon which the rule is based;

21 (VI) A copy of the rule and explanatory statement filed
22 in the office of the secretary of state;

23 (VII) All petitions for exceptions to, amendments of, or
24 repeal or suspension of the rule;

25 (VIII) A copy of any objection to the rule presented to
26 the committee on legal services of the general assembly by its
27 staff pursuant to paragraph (d) of subsection (8) of this

1 section and the agency's response; and

2 (IX) A copy of any filed executive order with respect to
3 the rule.

4 (c) Upon judicial review, the record required by this
5 section constitutes the official rule-making record with
6 respect to a rule. The agency rule-making record need not
7 constitute the exclusive basis for agency action on that rule
8 or for judicial review thereof.

9 (8.2) (a) A rule adopted on or after September 1, 1988,
10 shall be invalid unless adopted in substantial compliance with
11 the provisions of this section. However, inadvertent failure
12 to mail a notice of proposed rule-making to any person as
13 required by subsection (3) of this section shall not
14 invalidate a rule.

15 (b) An action to contest the validity of a rule on the
16 grounds of its noncompliance with any provision of this
17 section shall be commenced within two years after the
18 effective date of the rule.

19 SECTION 4. Safety clause. The general assembly hereby
20 finds, determines, and declares that this act is necessary
21 for the immediate preservation of the public peace, health,
22 and safety.

BILL 3

A BILL FOR AN ACT

1 CONCERNING THE PROCUREMENT ADVISORY COUNCIL, AND MAKING AN
2 APPROPRIATION IN CONNECTION THEREWITH.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Changes the membership of the procurement advisory council. Requires the council to study certain specified issues and to make initial and final recommendations to the state purchasing director. Authorizes the state purchasing director to distribute requests for proposals for the publication of a Colorado business opportunity bulletin in the event that the council recommends in its initial findings that such a bulletin be published.

Makes an appropriation for the implementation of the act.

3 Be it enacted by the General Assembly of the State of Colorado:

4 SECTION 1. 24-102-502, Colorado Revised Statutes, 1982
5 Repl. Vol., as amended, is REPEALED AND REENACTED, WITH
6 AMENDMENTS, to read:

7 24-102-502. Procurement advisory council. (1) The
8 governor shall establish a procurement advisory council, to be
9 composed of eleven members. The council shall meet at least

1 three times a year to develop recommendations for the
2 enhancement of opportunities to make purchases from Colorado
3 businesses and to identify ways to purchase goods and services
4 in the most cost-efficient manner. At least three members of
5 the council shall be from purchasing and using agencies, and
6 at least five members shall have business interests and shall
7 be owners or chief executives of businesses. Of the five
8 members with business interests, at least one shall be from
9 each of the following categories of businesses: Those with
10 one to twenty employees; those with twenty-one to fifty
11 employees; those with fifty-one to one hundred employees; and
12 those with more than one hundred employees. Effective July 1,
13 1988, the terms of office of the existing members of the
14 procurement advisory council shall terminate, and, prior
15 thereto, the governor shall appoint the members of the new
16 council. The term of office of each member shall be three
17 years; except that, in making the initial appointments, the
18 governor shall appoint four members for terms of three years,
19 four members for terms of two years, and three members for
20 terms of one year.

21 (2) The procurement advisory council shall study issues
22 which include, but which are not limited to, the following:

23 (a) Access to the procurement process by small
24 businesses, including businesses owned by women and
25 minorities;

26 (b) The number, size, location, age, and other
27 demographic information about businesses which participate and

1 have been successful in state purchasing;

2 (c) Publication of a Colorado business opportunity
3 bulletin, which would include opportunities to provide goods
4 and services to governmental bodies;

5 (d) Improvements in the publication of solicitations and
6 procurement opportunities;

7 (e) Identification of problems in the procurement
8 process, including time limits, bonding requirements, and
9 contract specifications and size;

10 (f) Whether increased personnel levels within the
11 division of purchasing are necessary to include more companies
12 in the procurement process; and

13 (g) An analysis of which additional goods and services
14 could be obtained through the private sector.

15 (3) The procurement advisory council shall report its
16 initial findings to the state purchasing director no later
17 than January 1, 1989, and it shall make final recommendations
18 to the state purchasing director no later than October 1,
19 1989. If the procurement advisory council recommends to the
20 state purchasing director in its initial recommendations that
21 a Colorado business opportunity bulletin be published, the
22 state purchasing director may distribute requests for
23 proposals for such publication before the final
24 recommendations are submitted. If no proposals for
25 publication are received from either a private contractor or a
26 state agency, the state purchasing director is not required to
27 publish the bulletin.

1 (4) Subsections (2) and (3) of this section and this
2 subsection (4) are repealed, effective October 15, 1989.

3 SECTION 2. Appropriation. In addition to any other
4 appropriation, there is hereby appropriated, out of any moneys
5 in the general fund not otherwise appropriated, to the
6 department of administration for allocation to the division of
7 purchasing, for the fiscal year beginning July 1, 1988, the
8 sum of _____ dollars (\$) and 0.5 FTE, or so
9 much thereof as may be necessary, for the implementation of
10 this act.

11 SECTION 3. Effective date. This act shall take effect
12 July 1, 1988.

13 SECTION 4. Safety clause. The general assembly hereby
14 finds, determines, and declares that this act is necessary
15 for the immediate preservation of the public peace, health,
16 and safety.

BILL 4

A BILL FOR AN ACT

1 CONCERNING THE DIVISION OF CORRECTIONAL INDUSTRIES.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Changes the membership of the correctional industries advisory committee. Eliminates the requirement that state agencies purchase goods and services from the division of correctional industries. Requires the correctional industries advisory committee to prepare an economic impact analysis of proposed venture agreements. Also requires the department of corrections to notify affected businesses of venture agreements, which may not be executed until a specified period has passed following notification.

2 Be it enacted by the General Assembly of the State of Colorado:

3 SECTION 1. 17-24-104 (2) (a) (V), Colorado Revised
4 Statutes, 1986 Repl. Vol., is REPEALED AND REENACTED, WITH
5 AMENDMENTS, to read:

6 17-24-104. Creation of division of correctional
7 industries and advisory committee - sunset review of
8 committee. (2) (a) (V) Two members from affected industries
9 in the business community, who shall be appointed by the

1 governor for terms of three years each. Effective July 1,
2 1988, the terms of office of the members of the advisory
3 committee from the business community serving on such date
4 shall terminate, and, prior thereto, the governor shall
5 appoint two members of the board to take office on such date,
6 who shall be from affected industries in the business
7 community and whose terms of office shall be three years.

8 SECTION 2. 17-24-111 (1) (a) and (2) (a), Colorado
9 Revised Statutes, 1986 Repl. Vol., are amended to read:

10 17-24-111. Purchasing requirement. (1) (a) The
11 director is hereby authorized to develop programs that produce
12 goods and services, including capital construction items,
13 which are used by agencies financed in whole or in part by the
14 state, any political subdivision thereof, or the federal
15 government and to develop programs that produce goods,
16 including capital construction items, which are used by public
17 entities involved in lease-purchase agreements as provided in
18 section 17-24-106 (1) (f) (II). THE DIRECTOR MAY ALSO DEVELOP
19 PROGRAMS TO SELL GOODS THROUGH ANY PRIVATE DISTRIBUTOR
20 NETWORK. The state and its institutions, agencies, and
21 departments shall MAY purchase through the state purchasing
22 director or purchasing agency authorized by section 24-102-302
23 (2), C.R.S., such goods and services as are produced by the
24 division, unless similar goods and services can be obtained at
25 or below the amount established for small purchases which are
26 exempt from the competitive sealed bidding requirements of the
27 "Procurement Code" contained in part 2 of article 103 of title

1 24, C.R.S. Goods and services produced by the division shall
2 be provided at a price comparable to the current market price
3 for similar goods and services. ~~No similar goods and services~~
4 ~~shall be purchased by state agencies from any other source~~
5 ~~than the division, unless the division certifies to the state~~
6 ~~purchasing director that it is not able to provide the goods~~
7 ~~or services at a price comparable to the current market price~~
8 ~~for a comparable level of quality and within a reasonable~~
9 ~~delivery time.~~

10 (2) (a) On or before April 1 and October 1 of each year
11 or as often within the year as may be necessary, the director
12 shall report to the state purchasing director or purchasing
13 agency, the office of state planning and budgeting, the
14 correctional industries advisory committee, and the joint
15 budget committee of the general assembly all goods and
16 services to be produced by the division during the following
17 one-year period. The state purchasing director or purchasing
18 agency shall inform all state agencies, within thirty days, of
19 such list. All state agencies that require such goods and
20 services for their operation shall inform the state purchasing
21 director or purchasing agency and the office of state planning
22 and budgeting of the anticipated orders for such goods and
23 services during the next one-year period. All orders for such
24 goods and services shall be placed by the agency through the
25 state purchasing director or purchasing agency. ~~Except as~~
26 ~~otherwise provided in subsection (1) of this section, all~~
27 ~~state agencies shall be required to purchase such goods and~~

1 ~~services-from-the-division.~~

2 SECTION 3. 17-24-121, Colorado Revised Statutes, 1986
3 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW
4 SUBSECTION to read:

5 17-24-121. Venture agreements. (1.5) As a part of the
6 review conducted pursuant to subsection (1) of this section,
7 the correctional industries advisory committee shall prepare
8 an economic impact analysis of each agreement proposed under
9 this section. The economic impact analysis shall identify the
10 purpose of the venture agreement, the businesses which will be
11 affected by the agreement, and the number of jobs that will be
12 lost, if any, if the agreement is executed. The affected
13 businesses identified in the economic impact analysis shall be
14 notified by the department of corrections in the event that
15 the department decides to enter into a venture agreement, and
16 the venture agreement shall not be executed until at least
17 ninety days have expired following such notification.

18 SECTION 4. Repeal. 17-24-111 (1) (b) and (3), Colorado
19 Revised Statutes, 1986 Repl. Vol., are repealed.

20 SECTION 5. Effective date. This act shall take effect
21 July 1, 1988.

22 SECTION 6. Safety clause. The general assembly hereby
23 finds, determines, and declares that this act is necessary
24 for the immediate preservation of the public peace, health,
25 and safety.

BILL 5

A BILL FOR AN ACT

1 CONCERNING THE MAINTENANCE BY GOVERNMENTAL ENTITIES OF RECORDS
2 RELATING TO COSTS FOR GOODS AND SERVICES.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Requires state agencies to keep complete records of the cost of goods and services provided to the agency and of the cost of goods and services provided by the agency to the general public. Requires the controller to promulgate rules concerning the maintenance of project records in accordance with cost accounting principles.

3 Be it enacted by the General Assembly of the State of Colorado:

4 SECTION 1. Article 2 of title 6, Colorado Revised
5 Statutes, as amended, is amended BY THE ADDITION OF A NEW
6 SECTION to read:

7 6-2-118. Records of costs - rules and regulations.

8 (1) For the purpose of determining whether goods or services
9 can be provided by contract in accordance with the provisions
10 of section 6-2-115.5, any state agency which is provided goods
11 or services or which provides any of the goods or services

1 listed in section 6-2-115.5 (1), which goods or services
2 exceed fifty thousand dollars in value, shall cause to be kept
3 and preserved a full, true, and accurate record of the cost of
4 such goods or services. To the extent the state agency
5 contracts with any other state agency in connection with a
6 project, such other state agency shall provide all necessary
7 data or information to document a full, true, and accurate
8 record of the cost of such project, which data or information
9 shall be kept in an orderly manner for a period of at least
10 six years after completion of the project. All such records
11 shall be considered public records and shall be made available
12 for public inspection.

13 (2) The controller shall promulgate rules and
14 regulations which are designed to implement the provisions of
15 this section. The controller shall promulgate rules and
16 regulations concerning the obligation of state agencies to
17 keep certain project records in accordance with generally
18 accepted cost accounting principles and standards.

19 SECTION 2. Effective date - applicability. This act
20 shall take effect July 1, 1988, and shall apply to persons who
21 provide goods and services on or after said date.

22 SECTION 3. Safety clause. The general assembly hereby
23 finds, determines, and declares that this act is necessary
24 for the immediate preservation of the public peace, health,
25 and safety.

BILL 6

A BILL FOR AN ACT

1 CONCERNING VENDOR ACCESS TO CONTRACTS UNDER THE "COLORADO
2 MEDICAL ASSISTANCE ACT".

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Prohibits the state department of social services from excluding any vendor from contracting with the department for the provision of medical services under the "Colorado Medical Assistance Act".

3 Be it enacted by the General Assembly of the State of Colorado:

4 SECTION 1. 26-4-110, Colorado Revised Statutes, 1982
5 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW
6 SUBSECTION to read:

7 26-4-110. Vendors - payments - rules. (9) No vendor
8 who meets the conditions imposed by this article shall be
9 excluded from contracting with the state department and its
10 contractors or subcontractors for the provision of medical
11 services to recipients authorized in this article.

12 SECTION 2. Safety clause. The general assembly hereby

1 finds, determines, and declares that this act is necessary
2 for the immediate preservation of the public peace, health,
3 and safety.

BILL 7

A BILL FOR AN ACT

1 CONCERNING THE CREATION OF A DATA BASE RELATING TO ECONOMIC
2 DEVELOPMENT.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Designates the joint library maintained by the Auraria board as the site of the state economic development data base. Requires the library to compile statistical data relating to economic development and authorizes the library to receive and expend moneys for the performance of its duties.

3 Be it enacted by the General Assembly of the State of Colorado:

4 SECTION 1. Article 70 of title 23, Colorado Revised
5 Statutes, as amended, is amended BY THE ADDITION OF A NEW
6 SECTION to read:

7 23-70-114. Auraria library - economic development data
8 base. The library located at the center, which is
9 administered by the university of Colorado at Denver and which
10 serves Metropolitan state college and the community college of
11 Denver, is hereby designated and shall be the site of the

1 state economic development data base. The library shall
2 compile data which is useful and relevant to persons concerned
3 with economic development in the state, including but not
4 limited to statistical and demographic profiles of Colorado
5 communities, labor and market statistics, statutory and
6 regulatory requirements for business formation, and such other
7 information as will assist the creation, expansion, and
8 relocation of business in Colorado. The library is authorized
9 to receive and expend all moneys, public and private, tendered
10 to it for the performance of its duties under this section.
11 The division of commerce and development in the department of
12 local affairs shall assist the library in the performance of
13 such duties.

14 SECTION 2. Safety clause. The general assembly hereby
15 finds, determines, and declares that this act is necessary
16 for the immediate preservation of the public peace, health,
17 and safety.

BILL 8

A BILL FOR AN ACT

1 CONCERNING THE ACTIVITIES OF FINANCIAL INSTITUTIONS.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Defines the terms "acquire", "bank holding company", "control", "de novo", "financial institution", "in-state financial institution", "operations are principally conducted", "out-of-state financial institution", "reciprocal state", "reciprocal state financial institution", "regional state", and "regional state financial institution".

Prior to a certain date, authorizes in-state financial institutions and regional state financial institutions to acquire control of each other. After a certain date, provides that in-state financial institutions and reciprocal state financial institutions may acquire control of each other. Requires the banking board and the state commissioner of savings and loan associations to determine whether the laws of other states provide reciprocity to in-state financial institutions. Allows certain out-of-state financial institutions with a connection to in-state financial institutions to be treated as if they are reciprocal state financial institutions.

Provides that, after a certain date, any in-state financial institution and any out-of-state financial institution may acquire one another. Prohibits the acquisition of in-state financial institutions by out-of-state financial institutions when such in-state financial institutions have only been in existence for a certain period of time.

Places restrictions on the authority of out-of-state financial institutions to acquire in-state financial institutions by seeking to charter such in-state financial

institutions de novo. Establishes procedures for in-state financial institutions to prohibit their acquisition by out-of-state financial institutions. After a certain date, authorizes the operation of branch banks if such a branch is a failed bank subject to liquidation, dissolution, or reorganization under Colorado banking law. After a certain date, authorizes the creation and operation of branch banks in Colorado if such branches are located more than a certain number of feet from the nearest boundary of the premises of another bank.

1 Be it enacted by the General Assembly of the State of Colorado:

2 SECTION 1. Title 11, Colorado Revised Statutes, 1987
3 Repl. Vol., is amended BY THE ADDITION OF A NEW ARTICLE to
4 read:

5 ARTICLE 6.4

6 Interstate Financial Institutions

7 11-6.4-101. Definitions. As used in this article,
8 unless the context otherwise requires: -

9 (1) "Acquire", as applied to an in-state financial
10 institution, means any of the following actions or
11 transactions:

12 (a) The merger or consolidation of an in-state financial
13 institution with an out-of-state financial institution;

14 (b) The acquisition by an out-of-state financial
15 institution of the direct or indirect ownership or control of
16 voting shares of an in-state financial institution if, after
17 the acquisition, the out-of-state financial institution will
18 directly or indirectly own or control more than twenty-five
19 percent of the outstanding voting shares of the acquired
20 in-state financial institution;

1 (c) The direct or indirect acquisition of all or
2 substantially all of the assets of an in-state financial
3 institution; or

4 (d) The taking of any other action that would result in
5 the direct or indirect control of an in-state financial
6 institution.

7 (2) "Bank holding company" means any company which has
8 control over any banking institution.

9 (3) "Control" means that:

10 (a) Any company directly or indirectly or acting through
11 one or more persons owns, controls, or has power to vote
12 twenty-five percent or more of the voting securities of the
13 financial institution; or

14 (b) The company controls in any manner the election of a
15 majority of the directors, managers, or trustees of the
16 financial institution.

17 (4) "De novo" means the method of newly establishing a
18 financial institution which is not created through the
19 acquisition of or merger with an in-state financial
20 institution and which is controlled through an out-of-state
21 financial institution.

22 (5) "Financial institution" means a state or a national
23 bank, a savings and loan association, or a bank holding
24 company.

25 (6) "In-state financial institution" means a financial
26 institution the operations of which are principally conducted
27 in this state.

1 (7) "Operations are principally conducted" means that
2 state where the largest percentage of the aggregate deposits
3 of all banking institution subsidiaries of the bank holding
4 company are held.

5 (8) "Out-of-state financial institution" means a
6 financial institution the operations of which are principally
7 conducted in a state other than Colorado.

8 (9) "Reciprocal state" means any state, including the
9 district of Columbia, in which the terms and conditions of
10 acquisition of control of a financial institution are
11 substantially comparable to those imposed by the laws of this
12 state.

13 (10) "Reciprocal state financial institution" means a
14 financial institution which is not itself controlled by a
15 financial institution outside of a reciprocal state and the
16 operations of which are principally conducted in a reciprocal
17 state.

18 (11) "Regional state" means the states of Arizona,
19 Kansas, Nebraska, New Mexico, Oklahoma, Utah, and Wyoming.

20 (12) "Regional state financial institution" means a
21 financial institution which is not itself controlled by a
22 financial institution outside of a regional state and the
23 operations of which are principally conducted in a regional
24 state.

25 11-6.4-102. Acquisition of control of in-state financial
26 institutions by out-of-state financial institutions.

27 (1) Subject to the limitations of this section, prior to

1 January 1, 1989, an in-state financial institution may acquire
2 control of a regional state financial institution, and a
3 regional state financial institution may acquire control of an
4 in-state financial institution.

5 (2) (a) On or after January 1, 1989, and prior to July
6 1, 1991, an in-state financial institution may acquire control
7 of a reciprocal state financial institution, and, subject to
8 paragraph (b) of this subsection (2), a reciprocal state
9 financial institution may acquire control of an in-state
10 financial institution.

11 (b) If the banking board or the state commissioner of
12 savings and loan associations finds, upon the application of
13 any interested party or upon the board's or the commissioner's
14 own initiative, that the laws of any reciprocal state
15 expressly authorize in-state financial institutions to acquire
16 control of reciprocal state financial institutions in such
17 state under terms and conditions substantially comparable to
18 those imposed by the laws of this state, control may be
19 acquired of any in-state financial institution by any
20 reciprocal state financial institution, pursuant to paragraph
21 (a) of this subsection (2).

22 (c) An out-of-state financial institution which
23 controlled at least three in-state financial institutions as
24 of May 9, 1956, or which, as of January 1, 1985, was the
25 beneficial owner, directly or indirectly, of seventy-five
26 percent or more of the equity interest, including, but not
27 limited to, any nonvoting equity interest in an in-state

1 financial institution, but the operations of which are
2 principally conducted in a state other than Colorado or a
3 reciprocal state, shall be considered a reciprocal state
4 financial institution and shall have the same powers and be
5 subject to the same conditions as any other reciprocal state
6 financial institution; except that the laws of the state where
7 its operations are principally conducted need not be
8 reciprocal with the laws of this state, and the finding by the
9 banking board or the state commissioner of savings and loan
10 associations under paragraph (b) of this subsection (2) shall
11 not be required.

12 (3) On or after July 1, 1991, any in-state financial
13 institution may acquire control of any out-of-state financial
14 institution, and, on or after that date, any out-of-state
15 financial institution may acquire control of any in-state
16 financial institution.

17 (4) Until July 1, 1992, an out-of-state financial
18 institution may not acquire or in any way control, directly or
19 indirectly, any in-state financial institution under
20 subsections (2) and (3) of this section unless such in-state
21 institution has been in operation since July 1, 1987, or, if
22 not, has been in operation for at least five years at the time
23 of acquisition of control.

24 (5) An out-of-state financial institution which is a
25 bank holding company may not acquire or in any way control,
26 directly or indirectly, an in-state financial institution by
27 organizing or seeking to charter de novo such in-state

1 financial institution; however, on or after July 1, 1992, a
2 financial institution which is a bank holding company the
3 operations of which are principally conducted in Colorado and
4 which is controlled by an out-of-state financial institution
5 which is a bank holding company may acquire control of any
6 in-state financial institution by organizing or seeking to
7 charter de novo such in-state financial institution.

8 (6) The board of directors of an in-state financial
9 institution may adopt a resolution on or before July 1, 1988,
10 to exempt the financial institution from the provisions of
11 this section. If the board of directors adopts such a
12 resolution and files a certified copy thereof with the
13 secretary of state on or before July 1, 1988, control of the
14 in-state financial institution may not be acquired under this
15 section, unless such resolution is revoked pursuant to
16 subsection (7) of this section and the requirements of
17 subsection (8) of this section are satisfied. If the
18 resolution is adopted by the board of directors of a state
19 bank, a certified copy thereof shall also be filed with the
20 division of banking on or before July 1, 1988, and, if the
21 resolution is adopted by the board of directors of a savings
22 and loan association, a certified copy thereof shall also be
23 filed with the state commissioner of savings and loan
24 associations before July 1, 1988. Filings may be made by
25 personal delivery on or before July 1, 1988, or by mailing by
26 certified mail postmarked on or before that date.

27 (7) If the board of directors of an in-state financial

1 institution adopts a resolution pursuant to subsection (6) of
2 this section revoking its resolution to exempt the financial
3 institution from the provisions of this section and files a
4 certified copy of such revoking resolution with the secretary
5 of state, six months after the date of such filing, control of
6 the in-state financial institution may be acquired under this
7 section. If the revoking resolution is adopted by the board
8 of directors of a state bank, a certified copy thereof shall
9 also be filed with the division of banking on the same date
10 that it is filed with the secretary of state, and, if the
11 revoking resolution is adopted by the board of directors of a
12 savings and loan association, a certified copy thereof shall
13 also be filed with the state commissioner of savings and loan
14 associations on the same date it is filed with the secretary
15 of state.

16 (8) No out-of-state financial institution may acquire,
17 directly or indirectly, any voting shares of, interest in,
18 control of, or substantially all of the assets of any in-state
19 financial institution or reciprocal state financial
20 institution which controls an in-state financial institution,
21 except in accordance with the provisions of this section or as
22 permitted without prior approval of the federal reserve board
23 under section 3 (a) of the federal "Bank Holding Company Act".
24 Nothing in this section shall limit the right of an in-state
25 financial institution to purchase or acquire any other such
26 in-state financial institution as permitted under any other
27 applicable law.

1 SECTION 2. Article 6 of title 11, Colorado Revised
2 Statutes, 1987 Repl. Vol., is amended BY THE ADDITION OF A NEW
3 SECTION to read:

4 11-6-101.5. Branch banking authorized.. (1) On or
5 after January 1, 1989, any bank may establish and operate
6 branches in this state if the branch is a failed bank subject
7 to liquidation, dissolution, or reorganization under the
8 provisions of article 5 of this title and has been acquired by
9 such other bank. No branch operated pursuant to this
10 subsection (1) may be operated unless located more than
11 twenty-five hundred feet from the nearest boundary of the
12 premises of another bank.

13 (2) On or after July 1, 1991, any bank may operate
14 branch banks if such branches are located more than
15 twenty-five hundred feet from the nearest boundary of the
16 premises of another bank.

17 SECTION 3. Repeal. 11-3-110 (3) (b) and 11-6-101 (1),
18 (1.5), and (1.7), Colorado Revised Statutes, 1987 Repl. Vol.,
19 are repealed.

20 SECTION 4. Effective date. Section 3 of this act shall
21 take effect January 1, 1989, and the remainder of this act
22 shall take effect upon its passage.

23 SECTION 5. Safety clause. The general assembly hereby
24 finds, determines, and declares that this act is necessary
25 for the immediate preservation of the public peace, health,
26 and safety.

BILL 9

A BILL FOR AN ACT

1 CONCERNING THE CREATION OF THE COLORADO STRATEGIC SEED FUND,
2 AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Creates the Colorado strategic seed fund, which fund is to be used to provide matching funds for investors who will manage operating seed funds. Provides that such operating seed funds will be used to provide investment capital for small businesses which are starting up or expanding.

Establishes the strategic seed fund council, which shall be responsible for oversight of the fund. Requires the council to establish criteria for making loans to operating seed funds. Limits the number of operating seed funds which may be established. Requires certain private sector financial support to be available before a loan is approved.

Makes an appropriation for the implementation of the act.

3 Be it enacted by the General Assembly of the State of Colorado:

4 SECTION 1. Article 4 of title 29, Colorado Revised
5 Statutes, 1986 Repl. Vol., as amended, is amended BY THE
6 ADDITION OF A NEW PART to read:

7 PART 9

8 COLORADO STRATEGIC SEED FUND

9 29-4-901. Short title. This part 9 shall be known and

1 may be cited as the "Colorado Strategic Seed Fund Act".

2 29-4-902. Legislative declaration. (1) The general
3 assembly finds and declares that the purpose of this part 9 is
4 to create the Colorado strategic seed fund to meet the special
5 needs of entrepreneurs and small business operators in
6 Colorado who would not otherwise be able to obtain funding for
7 the development of ideas into viable and marketable products
8 which would enhance the economic growth and development of
9 Colorado. This fund will be used to establish operating seed
10 funds for investment in small businesses. This investment
11 will, in turn, lead to further growth, diversification, and
12 improvement of the Colorado economy.

13 (2) The general assembly further finds and declares:

14 (a) That there exists a need to leverage private sector
15 investment in new and innovative products, in entrepreneurial
16 activity, and in economic development finance and that,
17 therefore, state assistance for development finance should
18 reflect a leveraging investment strategy; and

19 (b) That the lending and investment of moneys to develop
20 and improve the economy of the state requires specialized and
21 unique knowledge, skill, and experience.

22 (3) The general assembly further finds and declares that
23 the investment strategy of the managers of the operating seed
24 funds should be:

25 (a) To invest in companies in the earliest stages of
26 their development;

27 (b) To invest in companies which have exceptional merit

1 and which will be located within the state of Colorado;

2 (c) To invest in companies in which the founding
3 entrepreneurs have made significant individual investments;

4 (d) To invest in companies whose success will result in
5 the creation of jobs in Colorado;

6 (e) To invest in companies which will attract other
7 sources of venture capital for long-term development;

8 (f) To invest in attractive growth companies which are
9 coupled with the state's business incubators;

10 (g) To assist companies with direct and ongoing business
11 consultation to establish a viable management structure and
12 strategic plan;

13 (h) To provide an opportunity for subsequent financing
14 for follow-up operations of successful companies;

15 (i) To limit the amount invested by a manager in
16 investments outside of Colorado to not more than fifty percent
17 of the capital of an operating seed fund.

18 29-4-903. Definitions. As used in this part 9, unless
19 the context otherwise requires:

20 (1) "Authority" means the Colorado housing and finance
21 authority created in part 7 of this article.

22 (2) "Board" means the board of directors of the Colorado
23 housing and finance authority.

24 (3) "Council" means the Colorado strategic seed fund
25 council created in section 29-4-904.

26 (4) "Fund" means the Colorado strategic seed fund
27 created in section 29-4-905.

1 (5) "Operating seed fund" means a fund that is focused
2 on the early stages of a company's growth and which usually
3 requires an initial investment of one hundred fifty thousand
4 dollars (\$150,000) or less.

5 (6) "Seed capital" means an investment in a business
6 which has the following characteristics:

7 (a) The activities of the business are within the "seed
8 capital" stage. The seed capital stage includes the
9 preparation of a business plan, the performance of an initial
10 market analysis, the assimilation of a management team, the
11 initial legal and accounting work, the development of a
12 working prototype, and the development of follow-up financing.

13 (b) The business is a new business, with no prior sales;
14 except that, if a business with existing sales is undergoing a
15 substantial change in its business or product line, the
16 activity may be determined to be in the "seed capital" stage.

17 (c) There has been no prior investment in the business
18 by professional or institutional investors prior to investment
19 in the business by an operating seed fund.

20 (d) The operating seed fund is the lead investor in the
21 business or the coinvestor where another operating seed fund
22 is the lead investor.

23 (e) The business has the potential to be a rapidly
24 growing business or a value-added business which, once
25 established, has the potential of having a long-term presence
26 in Colorado's economy.

27 29-4-904. Colorado strategic seed fund council -

1 creation. (1) There is hereby created the Colorado strategic
2 seed fund council. The council shall, in consultation with
3 the authority, oversee and supervise the operating seed funds
4 established pursuant to section 29-4-905 and the activities of
5 the fund managers. The council shall consist of the following
6 members: Four venture capitalists, one management consultant,
7 one institutional investor, and one member of the general
8 assembly appointed jointly by the speaker of the house of
9 representatives and the president of the senate to serve for
10 the legislative biennium. The members of the council, except
11 for the legislative member, shall be appointed by the governor
12 and confirmed by the senate and shall serve for terms of four
13 years; except that, of the members first appointed to the
14 board by the governor, two shall be appointed for terms of two
15 years, two shall be appointed for terms of three years, and
16 two shall be appointed for terms of four years.

17 (2) The council shall oversee the operating seed funds
18 established pursuant to section 29-4-905. The council shall
19 monitor the funds and shall make reports to the authority
20 regarding the operating seed funds and the activities of the
21 fund managers. Each operating seed fund manager shall submit
22 a quarterly financial statement and an annual audited
23 financial statement to the council. Upon request, the council
24 shall make a report on the operating seed funds to the general
25 assembly.

26 29-4-905. Colorado strategic seed fund - operating seed
27 funds. (1) There is hereby created the Colorado strategic

1 seed fund, which shall be administered by the council in
2 consultation with the authority. The fund is established for
3 the purpose of providing state matching funds to private
4 investors who have raised money to establish an operating seed
5 fund.

6 (2) The moneys in the fund shall be appropriated
7 annually by the general assembly for the purposes of this part
8 9. Any moneys not appropriated shall remain in the fund and
9 shall not be transferred to or revert to the general fund of
10 the state at the end of any fiscal year. Any interest earned
11 on the investment or deposit of moneys in the fund also shall
12 remain in the fund and shall not be credited to the general
13 fund of the state. Contributions of money, property, or
14 services may be received from any state agency, county,
15 municipality, federal agency, person, corporation, or
16 foundation for use in carrying out the purposes of this part
17 9.

18 (3) The council shall utilize moneys held in the fund to
19 make loans to managers of operating seed funds for the purpose
20 of investing in seed capital businesses. The council shall
21 establish criteria for making loans to potential managers of
22 operating seed funds, and such criteria shall include
23 qualifications for the managers. The council shall consult
24 with the authority in determining which operating seed funds
25 are to receive loans from the fund, and no more than two
26 operating seed funds shall be established pursuant to this
27 section. Loans made by the council to the operating seed

1 funds shall be in the form of nonrecourse, noncompounding
2 loans with an interest rate of eight percent per annum which
3 can be accrued. The principal and interest on such loans
4 shall be due on the initially scheduled termination date of an
5 operating seed fund or ten years from the date of closing,
6 whichever date is earlier.

7 (4) The council shall not approve loans to any of the
8 operating seed funds unless private sector financial support
9 equal to the amount of the loan has been obtained by the
10 manager of the operating seed fund. The council may make a
11 preliminary commitment of funds to one of the operating seed
12 funds before the private sector financial support is obtained,
13 but the council shall not close on the loan until the required
14 amount of private sector financial support is obtained. At
15 least one-third of the private sector financial support shall
16 be contributed as of the date of closing, with the remainder
17 to be paid not later than two years after the date of closing.

18 SECTION 2. Appropriation. There is hereby appropriated,
19 out of any moneys in the general fund not otherwise
20 appropriated, to the Colorado housing and finance authority,
21 for the fiscal year beginning July 1, 1988, the sum of
22 _____ dollars (\$ _____), or so much thereof as may
23 be necessary, for the implementation of this act.

24 SECTION 3. Safety clause. The general assembly hereby
25 finds, determines, and declares that this act is necessary
26 for the immediate preservation of the public peace, health,
27 and safety.

BILL 10

A BILL FOR AN ACT

1 CONCERNING LETTERS OF CREDIT.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Clarifies the relationship of the provisions of the Uniform Customs and Practice for Documentary Credits to Colorado law on letters of credit.

2 Be it enacted by the General Assembly of the State of Colorado:

3 SECTION 1. 4-5-102, Colorado Revised Statutes, is
4 amended BY THE ADDITION OF A NEW SUBSECTION to read:

5 4-5-102. Scope. (4) If a letter of credit issued
6 pursuant to this article states that it is subject to the
7 provisions of the Uniform Customs and Practice for Documentary
8 Credits (UCP), International Chamber of Commerce Publication
9 No. 400, (1983 Revision), the UCP shall apply only to the
10 extent that it does not conflict with the provisions of this
11 article.

12 SECTION 2. Safety clause. The general assembly hereby

1 finds, determines, and declares that this act is necessary
2 for the immediate preservation of the public peace, health,
3 and safety.

BILL 11

A BILL FOR AN ACT

1 CONCERNING THE ESTABLISHMENT OF AN INCOME TAX CREDIT FOR
2 RESEARCH AND DEVELOPMENT ACTIVITIES IN ENTERPRISE ZONES.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Establishes an income tax credit for research and development activities in enterprise zones. Limits the amount of such credit.

3 Be it enacted by the General Assembly of the State of Colorado:

4 SECTION 1. Article 30 of title 39, Colorado Revised
5 Statutes, 1982 Repl. Vol., as amended, is amended BY THE
6 ADDITION OF A NEW SECTION to read:

7 39-30-105.5. Credit against Colorado income taxes based
8 on expenditures for research and development activities.

9 (1) Any taxpayer who makes expenditures in research and
10 development activities, which activities are conducted in an
11 enterprise zone, shall be allowed a credit against the income
12 tax imposed by article 22 of this title as follows:

1 (a) For income tax years commencing on or after January
2 1, 1989, but before January 1, 1990, an amount equal to six
3 and one-half percent of the amount by which the amount
4 expended for research and development activities in the
5 taxable year of the taxpayer exceeds the taxpayer's average of
6 the actual expenditures for such purposes made in such income
7 tax year and the next preceding income tax year;

8 (b) For income tax years commencing on or after January
9 1, 1990, an amount equal to six and one-half percent of the
10 amount by which the amount expended for research and
11 development activities in the income tax year of the taxpayer
12 exceeds the taxpayer's average of the actual expenditures for
13 such purposes made in the income tax year and the next
14 preceding two income tax years.

15 (2) In any one tax year, the amount of such credit
16 allowable for deduction from the taxpayer's tax liability
17 shall not exceed twenty-five percent of the total amount of
18 such credit plus any applicable carry forward amount. The
19 amount by which the credit allowed by subsection (1) of this
20 section in any one taxable year exceeds the taxpayer's tax
21 liability in such year may be carried forward until the total
22 amount of the credit is used.

23 (3) As used in this section, the term "expenditures in
24 research and development activities" means expenditures made
25 for such purposes, other than expenditures of moneys made
26 available to the taxpayer pursuant to federal or state law,
27 which are treated as expenses allowable for deduction under

1 the provisions of the federal "Internal Revenue Code of 1986",
2 and amendments thereto.

3 SECTION 2. Effective date - applicability. This act
4 shall take effect July 1, 1988, and shall apply to tax years
5 commencing on or after January 1, 1989.

6 SECTION 3. Safety clause. The general assembly hereby
7 finds, determines, and declares that this act is necessary
8 for the immediate preservation of the public peace, health,
9 and safety.

BILL 12

A BILL FOR AN ACT

1 CONCERNING THE ESTABLISHMENT OF SMALL BUSINESS DEVELOPMENT
2 CREDIT CORPORATIONS FOR THE PURPOSE OF FACILITATING THE
3 ECONOMIC DEVELOPMENT OF SMALL BUSINESSES, AND, IN
4 CONNECTION THEREWITH, PROVIDING FOR THE LICENSURE OF SUCH
5 CREDIT CORPORATIONS.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Provides for the creation of small business development credit corporations for the purpose of broadening access to financing and increasing the use of small business loan programs. Provides that the executive director of the department of regulatory agencies shall license and regulate such companies. Requires that the business of a licensee be the provision of financing and management assistance to business firms. Establishes penalties for violations of provisions of the act and rules and regulations of the executive director.

6 Be it enacted by the General Assembly of the State of Colorado:

7 SECTION 1. Title 11, Colorado Revised Statutes, as
8 amended, is amended BY THE ADDITION OF A NEW ARTICLE to read:

9 ARTICLE 36

1 Small Business Development Credit Corporations

2 11-36-101. Short title. This article shall be known and
3 may be cited as the "Small Business Investment Company Act of
4 1987".

5 11-36-102. Legislative declaration. The general
6 assembly finds and declares that there exists in the state a
7 need to promote sound economic development, to maintain
8 employment, and to encourage job opportunities throughout the
9 state, particularly in areas of unemployment and
10 underemployment, by encouraging and assisting the creation and
11 growth of small businesses. The general assembly further
12 finds and declares that there exists among companies of small
13 and moderate size inadequate access to working capital and to
14 capital for the purpose of acquiring and equipping commercial
15 and industrial facilities. The general assembly therefore
16 finds and declares that it is a valid public purpose to
17 preserve and promote the safety, health, and welfare of this
18 state and its inhabitants by the exercise of the powers
19 specified in this article to provide for the creation and
20 regulation of nondepository small business development credit
21 corporations to finance the acquisition, construction,
22 reconstruction, rehabilitation, improvement, and equipping of
23 such industrial and commercial facilities and to finance loans
24 to business firms of small and moderate size for working
25 capital purposes.

26 11-36-103. Definitions. As used in this article, unless
27 the context otherwise requires:

1 (1) "Executive director" means the executive director of
2 the department of regulatory agencies.

3 (2) "License" means a license issued under this article
4 authorizing a Colorado corporation to transact business as a
5 small business development credit corporation.

6 (3) "Licensee" means a Colorado corporation which is
7 licensed under this article.

8 (4) "Person" means an individual, a proprietorship, a
9 joint venture, a partnership, a trust, a business trust, a
10 syndicate, an association, a joint-stock company, a
11 corporation, a cooperative, a government or any agency
12 thereof, or any other organization. If used with respect to
13 acquiring control of or controlling a specified person,
14 "person" includes a combination of two or more persons acting
15 in concert.

16 (5) "Small business development credit corporation"
17 means a Colorado corporation licensed under the provisions of
18 this article to provide financing and management assistance to
19 business firms.

20 11-36-104. Powers and privileges of licensee. (1) The
21 business of a licensee shall be the business of providing
22 financing and management assistance to business firms. A
23 licensee shall not engage in a business other than providing
24 financing and management assistance to business firms.

25 (2) In addition to the powers and privileges provided to
26 a licensee by this article, a licensee has all the powers and
27 privileges conferred by its incorporating statute which are

1 not inconsistent with or limited by this article. The powers
2 of a licensee include, but are not limited to, the following:

3 (a) To borrow money and otherwise incur indebtedness for
4 its purposes, including the issuance of corporate bonds,
5 debentures, notes, or other evidences of indebtedness. A
6 licensee's indebtedness may be secured or unsecured and may
7 involve equity features, including, but not limited to,
8 provisions for conversion to stock and warrants to purchase
9 stock.

10 (b) To make contracts;

11 (c) To incur and pay necessary and incidental operating
12 expenses;

13 (d) To purchase, receive, lease, or otherwise acquire,
14 to hold, or to sell, convey, mortgage, lease, pledge, or
15 otherwise dispose of real or personal property, together with
16 rights and privileges that are incidental and appurtenant to
17 these transactions of real or personal property, if the real
18 or personal property is for the licensee's use in operating
19 its business or if the real or personal property is acquired
20 by the licensee from time to time in satisfaction of debts or
21 enforcement of obligations;

22 (e) To make donations for charitable, educational,
23 research, or similar purposes;

24 (f) To implement a reasonable and prudent policy for
25 conserving and investing its money before the money is used to
26 provide financing assistance to business firms or to pay the
27 expenses of the licensee.

1 11-36-105. Forms and terms of financing assistance. A
2 licensee may determine the form and the terms and conditions
3 for financing assistance provided by that licensee to a
4 business firm, including, but not limited to, forms such as
5 loans; purchase of debt instruments; straight equity
6 investments such as purchase of common stock or preferred
7 stock; debt with equity features such as warrants to purchase
8 stock, convertible debentures, or receipt of a percent of net
9 income or sales; royalty-based financing; guaranteeing of
10 debt; or leasing of property. A licensee may purchase
11 securities of a business firm either directly or indirectly
12 through an underwriter. A licensee may participate in the
13 program of the small business administration of the United
14 States pursuant to section 7 (a) of the federal "Small
15 Business Act", 15 U.S.C. 636 (a), or any other government
16 program for which the licensee is eligible and which has as
17 its function the provision or facilitation of financing or
18 management assistance to business firms. If a licensee
19 participates in a program referred to in this section, the
20 licensee shall comply with the requirements of that program.

21 11-36-106. Control of a business - limitations.

22 (1) Either by itself or in concert with a director, officer,
23 principal shareholder, or affiliate, with another licensee, or
24 with a director, officer, principal shareholder, or affiliate
25 of another licensee, a licensee shall not hold control of a
26 business firm, except as follows:

27 (a) If and to the extent necessary to protect the

1 licensee's interest as creditor of, or investor in, the
2 business firm, a licensee that provides financing assistance
3 to a business firm may acquire and hold control of that
4 business firm. Unless the executive director approves a
5 longer period, a licensee holding control of a business firm
6 under this section shall divest itself of the interest which
7 constitutes holding control as soon as practicable or within
8 five years after acquiring that interest, whichever is sooner.

9 (b) With the approval of the executive director, a
10 licensee may acquire and hold control of a corporation which
11 has offices located only in this state and which is licensed
12 as a small business investment company under the federal
13 "Small Business Investment Act of 1958", 15 U.S.C. 681.

14 (c) With the approval of the executive director, a
15 licensee may acquire and hold control of a company located in
16 this state which is a local development company in accordance
17 with the federal "Small Business Investment Act of 1958",
18 whether or not such a development company is or may become
19 certified by the small business administration of the United
20 States under section 503 of the federal "Small Business
21 Investment Act of 1958", 15 U.S.C. 697.

22 (d) With the approval of the executive director, a
23 licensee may acquire and hold control of another business firm
24 with offices only in this state which is engaged in no
25 business other than the business of providing financing and
26 management assistance to business firms.

27 (e) With the approval of the executive director, a

1 licensee may acquire and hold control of a business firm not
2 referred to in this subsection (1). The executive director
3 shall not approve an application under this section unless the
4 executive director determines that such an approval will not
5 cause the amount of the licensee's investments in business
6 firms covered by this section to exceed fifteen percent of the
7 amount of the assets of the licensee and that, in the
8 executive director's judgment, such an approval will promote
9 the purposes of this article. An approval by the executive
10 director under this section shall be for a period of not more
11 than five years; except that, in a particular case, the
12 executive director may subsequently extend the period beyond
13 five years if the executive director determines that a longer
14 period is needed and is consistent with the purposes of this
15 article.

16 (2) If the executive director fails to issue an order
17 approving or denying an application under paragraph (b) or (c)
18 of subsection (1) of this section within ninety days from
19 receipt by the executive director of an application which
20 complies with section 11-36-107 (3), the application shall be
21 considered approved by the executive director.

22 (3) For the purposes of subsection (1) of this section,
23 "hold control" means ownership, directly or indirectly, of
24 record or beneficially, of voting securities greater than:

25 (a) For a business firm with outstanding voting
26 securities held by fewer than fifty shareholders, forty
27 percent of the outstanding voting securities;

1 (b) For a business firm with outstanding voting
2 securities held by fifty or more shareholders, twenty-five
3 percent of the outstanding voting securities.

4 11-36-107. Powers and duties of the executive director.

5 (1) The executive director shall administer this article.
6 The executive director may issue orders and promulgate rules
7 that, in the opinion of the executive director, are necessary
8 to execute, enforce, and effectuate the purposes of this
9 article. Rules to enforce the provisions of this article
10 shall be governed by section 11-36-114. All rules shall be
11 promulgated pursuant to section 24-4-103, C.R.S.

12 (2) Whenever the executive director issues an order or a
13 license under this article, the executive director may impose
14 conditions that are necessary, in the opinion of the executive
15 director, to carry out the purposes of this article.

16 (3) An application filed with the executive director
17 under this article shall be in such a form and contain such
18 information as the executive director may require.

19 (4) Any transfer or purchase of ten percent or more of
20 the outstanding stock of a licensee shall be subject to the
21 approval of the executive director. Such approval shall be
22 subject to the same criteria as the criteria for approval of
23 the original license.

24 11-36-108. Fees - small business development credit
25 corporation cash fund. (1) The executive director is
26 authorized to charge a fee:

27 (a) For filing an application for a license;

1 (b) For filing an application for approval to acquire
2 control of a licensee;

3 (c) For filing an application for approval for a
4 licensee to merge with another corporation, an application for
5 approval for a licensee to purchase all or substantially all
6 of the business of another person, or an application for
7 approval for a licensee to sell all or substantially all of
8 its business or of the business of any of its offices to
9 another licensee;

10 (d) For an annual license;

11 (e) For an examination by the executive director of a
12 licensee or a subsidiary of a licensee, a fee established by
13 the executive director, to be paid within ten days after
14 receiving a statement from the executive director, based on
15 the number of examiner hours used for the examination, plus
16 travel expenses. Examiner time shall be billed at a rate not
17 less than twenty-five dollars per hour nor more than forty
18 dollars per hour.

19 (2) A fee for filing an application with the executive
20 director is nonrefundable and shall be paid at the time the
21 application is filed with the executive director.

22 (3) All fees collected pursuant to this article shall be
23 transmitted to the state treasurer, who shall credit the same
24 to the small business development credit corporation cash
25 fund, which fund is hereby created. The fund shall consist of
26 moneys required to be credited to the fund pursuant to this
27 article and all interest earned on the investment of moneys in

1 the fund. Interest shall be credited to the fund at least
2 annually. All moneys credited to the small business
3 development credit corporation cash fund shall be used as
4 provided in this article and shall not be deposited in or
5 transferred to the general fund of this state or any other
6 fund .

7 (4) The general assembly shall make annual
8 appropriations from the small business development credit
9 corporation cash fund for expenditures of the executive
10 director incurred in the performance of his duties under this
11 article.

12 (5) (a) The executive director shall propose, as part of
13 his annual budget request, an adjustment in the amount of each
14 fee which the executive director is authorized to collect
15 pursuant to this article. The budget request shall reflect
16 direct and indirect costs.

17 (b) Based upon the appropriation made, the executive
18 director shall adjust his fees so that the revenue generated
19 from said fees approximates its direct and indirect costs.
20 Such fees shall remain in effect for the fiscal year for which
21 the budget request applies.

22 (c) Beginning July 1, 1988, and each July 1 thereafter,
23 whenever moneys appropriated to the executive director for the
24 activities authorized pursuant to this article for the prior
25 fiscal year are unexpended, said moneys shall be made a part
26 of the appropriation to the executive director for the next
27 fiscal year, and such amount shall not be raised from fees

1 collected by the executive director. If a supplemental
2 appropriation is made to the executive director for such
3 activities, the fees of the executive director, when adjusted
4 for the fiscal year next adjusted by an additional amount
5 which is sufficient to compensate for such supplemental
6 appropriation. Funds appropriated to the executive director
7 for such activities in the annual general appropriation bill
8 shall be designated as cash funds and shall not exceed the
9 amount anticipated to be raised from fees collected by the
10 executive director.

11 11-36-109. Reporting requirements. (1) A licensee
12 shall keep books, accounts, and other records in such a form
13 and manner as the executive director may require. These
14 records shall be kept at such a place and shall be preserved
15 for such a length of time as the executive director may
16 specify.

17 (2) The executive director may require by order that a
18 licensee write down any asset on its books and records at a
19 valuation which represents its current value.

20 (3) Not more than ninety days after the close of each
21 calendar year or within a longer period if specified by the
22 executive director, a licensee shall file with the executive
23 director an audit report containing the following:

24 (a) Financial statements, including the balance sheet,
25 the statement of income or loss, the statement of changes in
26 capital accounts, and the statement of changes in financial
27 position; and

1 (b) Other information that the executive director may
2 require.

3 11-36-110. Examination of licensee. (1) The executive
4 director shall examine each licensee not less than once each
5 calendar year.

6 (2) The executive director may, at any time, examine a
7 licensee or a subsidiary of a licensee.

8 (3) A director, officer, or employee of a licensee or of
9 a subsidiary of a licensee being examined by the executive
10 director or a person having custody of any of the books,
11 accounts, or records of the licensee or of the subsidiary
12 shall exhibit to the executive director, on request, any of
13 the books, accounts, and other records of the licensee or of
14 the subsidiary and shall otherwise facilitate the examination
15 so far as it is in his power to do so.

16 (4) If in the executive director's opinion it is
17 necessary in the examination of a licensee or of a subsidiary
18 of a licensee, the executive director may retain any certified
19 public accountant, attorney, appraiser, or other person to
20 assist him. Within ten days after receipt of a statement from
21 the executive director, the licensee being examined shall pay
22 the fees of a person retained by the executive director under
23 this subsection (4).

24 11-36-111. Criteria for license. (1) After a review of
25 information regarding the directors, officers, and controlling
26 persons of the applicant for a license, a review of the
27 applicant's business plan, including at least three years of

1 detailed financial projections and other relevant information,
2 and a review of additional information considered relevant by
3 the executive director, the executive director shall approve
4 an application for a license if, and only if, the executive
5 director determines:

6 (a) That the applicant is capitalized in an amount that
7 is not less than two million dollars and that such sum is
8 adequate for the applicant to transact business as a small
9 business development credit corporation;

10 (b) That each director, officer, and controlling person
11 of the applicant is of good character and sound financial
12 standing; that each director and officer of the applicant is
13 competent to perform his or her functions with respect to the
14 applicant; and that the directors and officers of the
15 applicant are collectively adequate to manage the business of
16 the applicant as a small business development credit
17 corporation;

18 (c) That the applicant has provided a loan loss reserve
19 of not less than two percent of the total portfolio not
20 guaranteed by the United States government or any agency
21 thereof.

22 11-36-112. Denial of application. If the executive
23 director denies an application, the executive director shall
24 provide the applicant with a written statement explaining the
25 basis for the denial.

26 11-36-113. Use of term "small business development
27 credit corporation". A person transacting business in this

1 state, other than a licensee, shall not use the term "small
2 business development credit corporation" in its name or title,
3 shall not use any other name or title which indicates that the
4 person is a small business development credit corporation, and
5 shall not otherwise represent that the person is a small
6 business development credit corporation.

7 11-36-114. Rules and regulations - enforcement - civil
8 finances. (1) The executive director shall promulgate rules and
9 regulations to enforce the provisions of this article. Such
10 rules and regulations shall include, but need not be limited
11 to, the following:

12 (a) Disclosure of conflicts of interest;

13 (b) Prohibition of false statements made to the
14 executive director on any form required by him or during any
15 examination requested by him; or

16 (c) Prevention of fraud and undue influence by a
17 licensee.

18 (2) A violation of any provision of this article or any
19 rule or regulation of the executive director shall be
20 punishable by a fine, established by the executive director,
21 not to exceed five thousand dollars. Each such fine shall be
22 credited to the small business development credit corporation
23 cash fund. Any proceeding to impose a fine under this section
24 shall be pursuant to sections 24-4-104 and 24-4-105, C.R.S.

25 11-36-115. Injunctive relief. If, in the opinion of the
26 executive director, a person violates or there is reasonable
27 cause to believe that a person is about to violate any

1 provision of this article or any rule or regulation
2 promulgated pursuant to this article, the executive director
3 may bring an action in the name of the people of this state in
4 the appropriate court to enjoin the violation or to enforce
5 compliance. Upon a proper showing, a restraining order,
6 preliminary or permanent injunction, or proceeding pursuant to
7 rule 106 of the Colorado rules of civil procedure shall be
8 granted, and a receiver or a conservator may be appointed for
9 the defendant or the defendant's assets.

10 11-36-116. Denial, suspension, or revocation of license.

11 The executive director may deny, suspend, or revoke a license
12 if the applicant or holder violates any provision of this
13 article or any rules or regulations promulgated pursuant to
14 this article. A plea of nolo contendere or a deferred
15 prosecution shall be considered a violation for the purposes
16 of this section. Any proceeding to deny, suspend, or revoke a
17 license granted under this article shall be pursuant to
18 sections 24-4-104 and 24-4-105, C.R.S.

19 SECTION 2. 24-34-101, Colorado Revised Statutes, 1982
20 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW
21 SUBSECTION to read:

22 24-34-101. Department created - executive director.

23 (4) The executive director shall regulate small business
24 development credit corporations pursuant to article 36 of
25 title 11, C.R.S.

26 SECTION 3. Effective date. This act shall take effect
27 July 1, 1988.

1 SECTION 4. Safety clause. The general assembly hereby
2 finds, determines, and declares that this act is necessary
3 for the immediate preservation of the public peace, health,
4 and safety.

COMMITTEE RESOLUTION A

1 WHEREAS, The rental markets, communities, and
2 neighborhoods of the state of Colorado are being negatively
3 impacted by the existence of distressed properties; and

4 WHEREAS, The housing industry is an integral part of this
5 state's economy; and

6 WHEREAS, Many lower-income households currently are
7 paying excessive amounts of their income for housing; and

8 WHEREAS, The opportunity exists to facilitate the
9 reorganization and new financing and ownership of distressed
10 properties at below market values; and

11 WHEREAS, The Colorado housing and finance authority can
12 and has been negotiating for the purchase of these properties,
13 using private funds, and has encountered a need for reasonably
14 priced "gap" (or second mortgage) financing; now, therefore,

15 Be It Resolved by the Interim Economic Development
16 Committee of the Fifty-sixth General Assembly of the State of
17 Colorado, to make the following recommendation:

18 That the general assembly, the joint budget committee,
19 and the economic development commission investigate the
20 following concept with a view to appropriating five million
21 dollars to the Colorado division of housing (CDOH) loan
22 program as part of the state of Colorado's overall economic

1 development program: CDOH loans would be used to provide
2 "gap" financing for the purchase and acquisition of distressed
3 properties for persons with very low-incomes (those below 50%
4 of the median income in a given area) with financing to come
5 from tax-exempt bonds issued by the Colorado housing and
6 finance authority, which authority in conjunction with
7 appropriate local housing authorities, would bear the risk of
8 potential operating deficits; when possible, ownership of the
9 units purchased with these CDOH loans would be transferred to
10 the low-income occupants.