CCM-101

City of Cambridge

IN CITY COUNCIL

March 7, 1988

VICE MAYOR WOLF

WHEREAS: The Economic Security Committee of the Cambridge Peace Commission has published The Cambridge Case for Diversification Planning, the product of several years of work in dialogue with Cambridge Military contractors to further diversification planning; and

WHEREAS: This report made recommendations for several ways to support diversification planning; and

WHEREAS: One of these recommendations pointed to the need for State economic diversification legislation; and

WHEREAS: Such legislation -H2816- The Massachusetts Economic Diversification Act - has been filed and that Avt supports the formation of a semi-public corporation whose mandate would be to underwrite business efforts to devleop non-weapons applications, thereby reducing dependency on military contracts and preserving jobs for our citizens; and

WHEREAS: This legislation will be heard soon by the Legislature's Labor and Commerce Committee; therefore be it

RESOLVED: That the Cambridge City Council go on record as supporting H2816; and be it further

RESOLVED: That the City Clerk so inform the Cambridge delegation at the State House and the Labor and Commerce Committee, chaired by Senator Lois Pines and Representative Marilyn Travinski.

The Commonwealth of Massachusetts

IN THE YEAR ONE THOUSAND NINE HUNDRED AND EIGHTY-EIGHT

AN ACT ESTABLISHING A MASSACHUSETTS ECONOMIC DIVERSIFICATION CORPORATION.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1.

The General Laws, as appearing in the 1986 Official Edition are hereby amended by inserting after chapter 40M the following chapter:-

40N The following terms as used in this chapter shall, unless the context clearly requires otherwise, have the following meanings:

"Board" the board of directors of the corporation.

"Corporation", the Massachusetts Economic Diversification Corporation.

"Financial aid", the infusion of risk capital to persons for use in the research, development and exploitation of specific inventions and products.

NOTE. – Use ONE side of paper ONLY. DOUBLE SPACE. Insert additional leaves, if necessary.

"Invention", any new process or new technique without regard to whether a patent has or could be granted.

"Person", any individual, partnership, corporation or joint venture carrying on business, or proposing to carry on business, within the state.

"Product", any product, device, technique or process, which is or may be exploitable commercially; such term shall not refer to pure research but shall be construed to apply to such products, devices, techniques or processes which have advanced beyond the theoretic stage and are readily capable of being, or have been, reduced to practice.

"Venture agreement", means without limitation, any contractual arrangement with any person whereby the corporation obtains rights from or in an invention or product or proceeds therefrom in exchange for the granting of financial aid to such person.

<u>Section 2.</u> (a) There is hereby created a body politic and corporate to be known as the Massachusetts Economic Diversification Corporation. The corporation is hereby constituted a public instrumentality and the exercise by the corporation of the powers conferred in this chapter shall be deemed and held to be the performance of an essential public function.

(b) The corporation is hereby placed in the executive office of economic affairs but shall not be subject to the supervision or control of said office or of any board, bureau, department or to any other agency of the commonwealth except as specifically provide in this chapter.

(c) The corporation shall be governed, and its corporate powers exercised by a board of directors which shall consist of seven directors: the secretary of economic affairs, and six directors appointed by the governor at least five of whom shall be knowledgeable and have favorable reputations for skill, knowledge, and experience in the areas of economic diversification and the commercial development of technological invention and new products.

Each board member appointed by the governor shall serve for a term of five years, except that in making the initial appointments the governor shall appoint two members to serve for one year, two to serve for three years and two to serve for five years.

Any person appointed to fill a vacancy in the office of a member of the board shall be appointed in a like manner and shall serve for the unexpired term of such member. Any member shall be eligible for reappointment. Any member may be removed from his office by the governor for cause.

(d) The directors shall annually elect one of their number as chairman and one as secretary. The board may elect such other officers of the board as it deems proper. Members shall receive no compensation for the performance of their duties hereunder but shall be reimbursed for necessary expenses incurred in the performance thereof.

(e) Four members of the board shall constitute a quorum and the affirmative vote of four directors shall be necessary and sufficient for any action to be taken by the board. No vacancy in the membership of the board shall impair the right of a quorum to exercise all the rights and perform all the duties of the board. Any action taken by the board may be authorized by resolution at any regular or special meeting and shall take effect immediately unless otherwise provided in the resolution. Notice of meeting, whether special or regular, shall be given by telephone or orally, not less than forty-eight hours prior to the meeting. The board may delegate to one or more of its members, or its officers, agents and employees, such powers and duties as it may deem proper.

(f) The provisions of chapter two hundred and sixty-eight A shall apply to all directors, officers and employees of the corporation, except that the corporation may invest in, purchase from, sell to, borrow from, loan to, contract with or otherwise deal with any person or entity in which any director of the corporation is in any way interested or involved; provided, however, that such interest or involvement is disclosed in advance to the members of the board and recorded in the minutes of the board; and provided, further, that no director having such an interest or involvement may participate in any decision of the board relating to such a person or entity.

(g) Neither the corporation nor any of its officers, agents, employees, consultants or advisors shall be subject to the provisions of sections nine A, forty-five, forty-six and fifty-two of chapter thirty, or to chapter thirty-one.

(h) All officers and employees of the corporation having access to its cash or negotiable securities shall give bond to the corporation, at its expense in such amounts and with such surety as the board may prescribe. The persons required to give bond may be included in one or more blanket or scheduled bonds.

(i) Board members and officers who are regular, compensated employees of the corporation shall not be liable to the commonwealth, to the corporation or to any other person as a result of their activities, whether ministerial or discretionary, as such board members or officers except for willful dishonest, or intentional violation of law. The board of the corporation may purchase liability insurance for board members, officers and employees and may indemnify said persons against claims of others.

<u>Section 3.</u> The board shall appoint a president of the corporation who shall not be a member of the board and who shall serve at the pleasure of the board and shall receive such compensation as shall be determined by the board. The president

shall be the chief administrative and operational officer of the corporation and shall direct and supervise the administrative affairs and the general management of the corporation. The president may employ such other employees as shall be designated by the board of directors, shall attend all meetings of the board, keep a record of all proceedings and maintain and be custodian of all books, documents and papers filed with the corporation and of the minute book of the corporation and of its official seal. He may cause copies to be made of all minutes and other records and documents of the corporation and may give certificates under the official seal of the corporation to the effect that such copies are true copies, and all persons dealing with the corporation may rely upon such certificates.

Section 4. The corporation shall have perpetual succession and shall adopt, amend and repeal bylaws and regulations for the conduct of its affairs. Such succession shall continue until the existence of the corporation is terminated by law; provided, however, no such termination shall affect any outstanding contractual obligation of the corporation to assist any person and the commonwealth shall succeed to the obligations of the corporation under such contract. Upon termination of the corporation its rights and properties shall pass to the commonwealth.

Section 5. The purpose of the corporation shall be to stimulate and encourage the sustainable diversification of the activities of weapons systems-oriented persons into revenue generating non weapons systems activities by the infusion of financial aid and technical assistance in situations in which such financial aid would not otherwise be reasonably available from commercial sources, and for this purpose the corporation shall have the following powers:

(1) to have perpetual succession as a body corporate and to adopt bylaws, policies and procedures for the regulation of its affairs and conduct of its businesses as provided in section four;

(2) to enter into venture agreements with persons doing business in Massachusetts upon such terms and on such conditions as are consistent with the purposes of this chapter, for the advancement of financial aid to such persons for the development of specific products, procedures and techniques, or for research of new applications for products, procedures and techniques to be developed and produced in the state, and to condition such agreements upon contractual assurances that the benefits of increasing or maintaining employment and tax revenues shall remain in this state or shall accrue to it; provided, however, that such agreements do not give the corporation any ownership or ownership rights in the person which is developing said products, procedures, and techniques;

(3) to receive and accept aid or contributions from any source of money, property or labor or other things of value, to be held, used and applied to carry out the purposes of this

chapter, subject to the conditions upon which such grants and contributions may be made, including but not limited to, gifts or grants from any department or agency of the United States or the commonwealth;

(4) to provide technical assistance to persons seeking to develop and produce products in this state which may include, but not be limited to, locating partners, businesses, or entrepreneurs interested in developing said product, securing private financing for the development and production of said product, and the evaluation of the commercial feasibility of said product;

(5) to acquire, lease, purchase, manage, hold and dispose of real and personal property in the commonwealth and lease, convey, or deal in or enter into contracts with respect to such property on any terms necessary or incidental to the carrying out of these purposes;

(6) to hold patents, copyrights, trademarks or any other evidences of protection or exclusivity as to any products as defined herein issued under the laws of the United States or any state or or any nation;

(7) to employ such assistants, agents and other employees, and to engage consultants, attorneys and appraisers as may be necessary or desirable to carry out its purposes in accordance with this chapter;

(8) to make and enter into all contracts and agreements necessary

or incidental to the performance of its duties and the execution of its powers under this chapter;

(9) to sue and be sued, plead and be impleaded, adopt a seal and alter the same at pleasure;

(10) to procure insurance against any loss in connection with its property and other assets in such amounts and from such insurers as it deems desirable;

(11) to the extent permitted under its contract with other persons, to consent to any termination, modification, forgiveness or other change of any term of any contractual right, payment, royalty, contract or agreement of any kind to which the corporation is a party;

(12) invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in such investments as may be lawful for fiduciaries in the commonwealth;

(13) borrow money, provided that such indebtedness of the corporation shall be payable solely out of its own revenues and resources and shall not be an obligation of the state;

(14) appear on its own behalf before boards, commissions, department or other agencies of municipal, state, or federal government;

(15) to do all acts and things necessary and convenient to carry out the purposes of this chapter.

Section 6. All applications for financial aid shall be forwarded, together with an application fee prescribed by the corporation, to the president of the corporation. The president, after preparing necessary records for the corporation, shall forward each application to the staff of the corporation, for an investigation and report concerning the advisability of approving the proposed financial aid for such applicant and concerning any other factors deemed relevant by the corporation. Such investigation and report shall include, but shall not be limited to, such facts about the company under consideration as its history, wage standards, job opportunities, stability of employment, the extent of its dependency on weapons systems contracts, past and present financial condition and structure, pro-forma income statements, present and future markets and prospects, integrity of management as well as the feasibility of the proposed product and invention to be granted financial aid, including the state of development of such product as well as the likelihood of its commercial feasibility. After receipt and consideration of the above report and after such other action as is deemed appropriate, the corporation shall approve or deny the application. Before approving any such application the board shall first find and incorporate in its minutes that:

(1) the person applying for financial aid has a clear and developed product concept or prototype;

(2) The person applying for financial aid has derived over twenty-five per cent of its operating income generated from operations within the commonwealth, in each of the preceding five years or over the life of the business, whichever

is less, from prime defense weapons systems contracts or from subcontracts entered into in connection with prime defense weapons systems contracts.

(3) the product has a reasonable chance of contributing to the sustainable diversification of all or a portion of such person's business to non-weapons systems related industrial or commercial activity, or to create a new non-weapons systems related industrial or commercial business.

(4) the financial aid provided by the corporation shall only be used to further the commercialization of the product, including, but not limited to research and design of the product, the construction of a prototype, the development of a manufacturing process to produce the product, or to implement a marketing or distribution strategy for the product;

(5) Financial aid by the corporation is necessary for the commercial development of the product because funding for such commercial development is unavailable in private capital markets, or because funding is only available on terms that would substantially hinder successful commercial development of the product; and

(6) the employment created or maintained by commercial development and production of the product will be in Massachusetts.

The applicant shall be promptly notified of the approval or denial of the application. In making the decision as to approval or denial of the application the corporation shall give

Section 11. Any documentary materials or data whatsoever made or received by any director or employee of the corporation, to the extent that such material or data consist of trade secrets or commercial or financial information regarding the operation of any business conducted by an applicant for, or recipient of, any form of assistance which the corporation is empowered to render, or regarding the competitive position of such applicant or recipient in a particular field of endeavor, shall not be deemed public records of the agency and shall not be subject to the provisions of section ten of chapter sixty-six. Any discussion or consideration of such trade secrets or commercial or financial information, may be held by the board, or by any subcommittee of said boards, in executive session closed to the public, notwithstanding the provisions of section eleven A1/2 of chapter thirty A, provided, however, that the purpose of any such executive session shall be set forth in the official minutes of the corporation and no business which is not directly related to such purpose shall be transacted, nor shall any vote be take during such executive session.

priority to those persons:

(a) whose proposed product or invention is to be used to convert all or portion of such person's business to non-weapons systems-related industrial or commercial activity, or to create a new non-weapons systems-related industrial or commercial business.

Section 7. The corporation shall annually submit a complete and detailed report of the corporation's activities including a complete operating and financial statement within ninety days after the end of the fiscal year, to the governor, to the clerk of the house of representatives, and to the clerk of the senate.

Section 8. The books and records of the corporation shall be subject to an annual audit by the auditor of the commonwealth.

Section 9. The corporation shall be and is hereby declared exempt from all franchise, corporate business and income taxes levied by the state; provided, however, that nothing herein shall be construed to exempt from any such taxes, or from any taxes levied in connection with the manufacture or sale of any products which are the subject of any agreement made by the corporation, any person entering into any agreement with the corporation.

Section 10. The powers set forth in this chapter shall be interpreted broadly to effectuate the purposes thereof and shall not be construed as a limitation of powers.

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City of Cambridge

13.

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March 7, 1988

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WHEREAS: This legislation will be heard soon by the Legislature's Labor and Commerce Committee; therefore be it

RESOLVED: That the Cambridge City Council go on record as supporting H2816; and be it further

RESOLVED: That the City Clerk so inform the Cambridge delegation at the State House and the Labor and Commerce Committee, chaired by Senator Lois Pines and Representative Marilyn Travinski.

In City Council March 7, 1988.
Adopted by the affirmative vote of 9 members.
Attest:- Joseph E. Connarton, City Clerk.

A true copy;

ATTEST:- Joseph E. Connarton

Joseph E. Connarton, City Clerk.

Order #135-148

VM Wolf re: resolutions supporting H2816-
The Massachusetts Economic Diversification
Act.

In City Council,

March 7, 1988

3-7-88

VM Wolf

Order Adopted

9-0-0-0