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DATE: March 5, 2002

**HOUSE OF REPRESENTATIVES
AS REVISED BY
COUNCIL ON COMPETITIVE COMMERCE
ANALYSIS**

BILL #: CS/CS/HB 779
RELATING TO: Economic Stimulus
SPONSOR(S): Representative(s) Kilmer

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) ECONOMIC DEVELOPMENT AND INTERNATIONAL TRADE YEAS 8 NAYS 0
 - (2) FISCAL POLICY AND RESOURCES (W/D)
 - (3) COUNCIL ON COMPETITIVE COMMERCE YEAS 12 NAYS 0
 - (4)
 - (5)
-

I. SUMMARY:

CS/CS/HB 779 revises economic development incentive programs.

Major provisions of the bill amend:

- Section 288.095, F.S., **Economic Development Trust Fund**, changing how, when, and by whom the annual economic development incentives report is published;
- Section 288.1045, F.S., **Qualified Defense Contractor Tax Refund Program (QDC)**, temporarily allowing QDC businesses to continue in the program when targets are not met, providing additional conditions for prorated QDC tax refunds, and changing eligibility criteria by allowing additional contracts to qualify under the QDC program;
- Section 288.106, F.S., **Qualified Target Industry Tax Refund Program (QTI)**, temporarily allowing companies to continue in the program when targets are not met and providing additional conditions for prorated QTI tax refunds; and
- Section 213.053, F.S., **Confidentiality and Information Sharing**, adding to the types of tax information that must be shared by the Department of Revenue with the Office of Tourism, Trade, and Economic Development.

The bill would take effect upon becoming a law.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Background -- National and Florida Economies

National Economy

Following a severe slowdown in the national economy, recent statistics indicate that consumer and commercial demand is consistent with or even slightly larger than the modest levels exhibited over the last couple of months. As restraining market forces continue to diminish, and long-term prospects for productivity growth remain favorable with an accommodating monetary policy, the economic outlook for the nation suggests that a modest recovery has begun. The Federal Reserve believes in this favorable long-term outlook despite predicted weakness in the economy for the very near future.¹

The Bureau of Labor Statistics, United States Department of Labor, recently reported that the nation's unemployment has fallen by .2 percent to 5.6 percent, while the economy overall managed a .2 percent growth increase in the final three months of 2001, despite the terrorist attacks on September 11th, and the pre-existing recession. The weakest employment segments of the nation's economy included air transportation and manufacturing. Retailing, the housing market, and financial and insurance services all reported positive employment figures relative to the overall economy. Employment data, however, historically lags the general economy and analysts expect employment to remain weak well into the summer.

In the State of the Union address, President Bush reiterated his call for an economic stimulus package, which includes business tax breaks, acceleration of existing income tax cuts, and unemployment assistance. The President believes that despite the recent positive economic news, a stimulus package is desirable to alleviate continued sluggishness in the economy. Federal Reserve Chairman Alan Greenspan recently testified before the Senate Budget Committee that the economic recovery continues to progress regardless of economic stimulus and that any stimulus would affect the timing, rather than the presence, of an economic recovery.²

¹ "The Fed Holds Off," *The Economist*, January 31, 2002; "Fed Holds Steady on Interest Rates as Economy Firms," *New York Times*, January 31, 2002; Statement of Alan Greenspan, Chairman, Board of Governors, Federal Reserve System, before Senate Budget Committee, January 24, 2002.

² *Id.*

Florida's Economy

Even before the September 11th terrorist attacks, Florida's tourism and hospitality sector was slowing in parts of the state, reflecting a reduction of business travel and some softness in leisure travel. Attendance at Central Florida theme parks was down from the previous year. The terrorist attack severely affected Florida's service-oriented economy, which was remaining strong despite tourism's weakness. Tourism's sharp decline eradicated prospects for a positive fiscal situation for 2001.³ The outlook for 2002 is a reasonably quick increase in the service industry as leisure traveler confidence grows.⁴ The confidence growth in the air industry is particularly important for markets that largely depend on visitors arriving by air.

Florida's December 2001, unemployment rate jumped to 5.7 percent, the highest it has been since January 1995, when it was 5.8 percent. The December unemployment rate increased by 0.5 percent from November's revised rate of 5.2 percent, and was 2.1 percent higher than the year-ago rate of 3.6 percent. The U.S. jobless rate edged up 0.2 percent to 5.8 percent in December, 0.1 percent above Florida's rate. Florida's unemployment rate has been at or below the national average since March 1995. Although the national recession continues to negatively impact Florida's job market, the December jobless rate of 5.7 percent was still lower than the rates Florida experienced during the 1990-1991 recession.⁵

Economic Development Incentives

Economic Development Trust Fund

Section 288.095, F.S., creates the Economic Development Trust Fund within OTTED and establishes the Economic Development Incentives Account within the trust fund. The Economic Development Incentives Account consists of moneys appropriated to the account for purposes of the Qualified Defense Contractor (QDC) Tax Refund Program (s. 288.1045, F.S.) and the Qualified Target Industry (QTI) Tax Refund Program (s. 288.106, F.S.), and the Brownfield Redevelopment Bonus Refunds (s. 288.107, F.S.).

Section 288.095(3), F.S., imposes a cap on the total share of QDC and QTI tax refund payments scheduled in all active certifications for a fiscal year. For fiscal year 2001-2002, the cap is \$30 million. During the 2001 regular session, the Legislature raised the cap for subsequent fiscal years to \$35 million. The total amount of tax refund claims approved for payment by OTTED based on actual project performance may not exceed the amount appropriated to the Economic Development Incentives Account for such purposes for the fiscal year. In the event the Legislature does not appropriate an amount sufficient to satisfy OTTED's tax refund projects for the QTI and QDC programs in any fiscal year, OTTED must prorate the refunds. Section 288.095(3), F.S., also requires OTTED to submit to the board of directors of Enterprise Florida, Inc., by September 30 of each year, a complete and detailed report of all programs funded from the Economic Development Trust Fund.

Qualified Defense Contractor Tax Refund Program (QDC)

Finding that high technology jobs in the state were threatened by downsizing in the national defense budget, the Legislature in 1993 created a tax refund program to encourage defense

³ "Nation and Southeast Set For Modest Recovery in 2002," Federal Reserve Bank of Atlanta.

⁴ Id.

⁵ Florida Agency for Workforce Innovation, press release, January 17, 2002

contractors to employ Florida citizens. The Qualified Defense Contractor Tax Refund Program (QDC) authorizes refunds to a certified contractor that: 1) secured a new Department of Defense contract in Florida, 2) consolidated an existing DOD contract in Florida, 3) converted defense production jobs to non-defense production jobs, or 4) contracted for the reuse of a defense-related facility (s. 288.104, F.S., 1994 Supp.). The program was repealed effective December 1, 1994.⁶ In 1996, the QDC program was recreated and codified at s. 288.1045, F.S. The next scheduled repeal is June 30, 2004.

The QDC program features a local financial support component. An applicant must secure a resolution from the county government recommending the project and indicating the necessary commitment of financial support. Local financial support means funding from local sources, public or private, which is equal to 20 percent of the annual tax refund for a qualified business. A qualified applicant may not contribute, directly or indirectly, more than 5 percent of local support funding, nor can state funds appropriated from the General Revenue Fund be used to satisfy the local financial support requirement.⁷ Section 288.1045(5)(c), F.S., provides a mechanism for prorating tax refunds in years when the local financial support falls below 20 percent. Section 288.1045(1)(q), F.S., provides a mechanism for an applicant, which is located in a county designated under the Rural Economic Development Initiative, to apply for a local financial support exemption option. An applicant exercising this option may not receive more than 80 percent of the total tax refunds allowed under the QDC program.

Upon entering into a tax refund agreement with OTTED, a qualified applicant may receive refunds from the Economic Development Trust Fund for the following taxes paid beginning with the first taxable year after the agreement is negotiated:

- taxes on sales, use, and other transactions paid under chapter 212, F.S.
- corporate income taxes paid under chapter 220, F.S.
- intangible personal property taxes paid under chapter 199, F.S.
- emergency excise taxes paid under chapter 221, F.S.
- excise taxes paid on documents under chapter 201, F.S.
- ad valorem taxes paid, as defined in s. 220.03(1)(a), F.S., on June 1, 1996.

A qualified QDC applicant may not receive more than \$5,000 times the number of jobs provided in the tax refund agreement with OTTED and may not receive refunds of more than 25 percent of the total tax refunds provided in the tax refund agreement for any fiscal year. A qualified applicant may not receive more than \$2.5 million in tax refunds annually and no more than \$7.5 million in total tax refunds for all years. For the first 6 months of each fiscal year, the director of OTTED must set aside 30 percent of the amount appropriated for the QDC program for paying tax refunds to qualified applicants who employ 500 or fewer full-time Florida employees. Unencumbered funds remaining after the six-month set-aside period may be used to pay other qualified applicants.

Section 288.1045(5)(g), F.S., provides a prorated tax refund less a 5 percent penalty for a qualified QDC applicant that has satisfied all QDC requirements but has only achieved 80 percent or more of its projected employment goals.

The Office of Tourism, Trade, and Economic Development reports that beginning with operations through December 31, 2001, the QDC program has resulted in 4 projects (active or complete), 740

⁶ The Legislature had specified that the program would be repealed effective December 1, 1994, if no qualified applicant had entered into a valid new DOD contract or begun consolidation of an existing DOD contract, which was expected to result in the employment of at least 1,000 full-time employees. Because this condition was not satisfied by a single qualified applicant, the statute stood repealed.

⁷ Excluding tax revenues shared with local governments pursuant to law.

direct jobs, and 718 indirect jobs paying on average \$40,321 annually. The 4 projects accounted for \$14.2 million in capital investment and received \$3.6 million in QDC incentives.⁸

Qualified Target Industry Tax Refund Program (QTI)

The Qualified Target Industry Tax Refund Program (QTI), authorized in s. 288.106, F.S., is one of the state's most widely used economic development incentives. The Office of Tourism, Trade, and Economic Development refers to the QTI program as "a significant tool available to Florida communities to encourage quality job growth in targeted, high-value-added businesses."⁹

Section 288.106, F.S., authorizes eligible businesses to receive refunds for previously paid taxes based upon the creation of jobs at a certain salary level. A QTI applicant must enter into an agreement with OTTED, outlining its goals for jobs and salaries under the program. Compliance with the terms and conditions of a tax refund agreement is a condition precedent for the receipt of a tax refund each year. Failure to comply with the terms and conditions of the agreement results in the loss of eligibility for receipt of all tax refunds previously authorized and the revocation by the director of OTTED of the business' QTI certification.

Upon entering into a tax refund agreement with OTTED, a qualified applicant may receive refunds from the Economic Development Trust Fund for the following taxes paid beginning with the first taxable year after the agreement is negotiated:

- taxes on sales, use, and other transactions paid under chapter 212, F.S.;
- corporate income taxes paid under chapter 220, F.S.;
- intangible personal property taxes paid under chapter 199, F.S.;
- emergency excise taxes paid under chapter 221, F.S.;
- excise taxes paid on documents under chapter 201, F.S.; and
- ad valorem taxes paid, as defined in s. 220.03(1)(a), F.S., on June 1, 1996.

Section 288.106(5)(d), F.S., provides for a prorated tax refund, less a 5 percent penalty, for a QTI business that proves it has achieved at least 80 percent of its job creation goal and has met all other requirements.

The QTI program features a local financial support component similar to the one under the Qualified Defense Contractor (QDC) program. Local financial support means funding from local sources, public or private, which is equal to 20 percent of the annual tax refund for a qualified business. A qualified applicant may not contribute, directly or indirectly, more than 5 percent of local support funding, nor can state funds appropriated from the General Revenue Fund, excluding tax revenues shared with local governments, be used to satisfy the local financial support requirement. A QTI business, which is located in a county with a population of 75,000 or fewer or a county with a population of 100,000 or fewer that is contiguous to a county with a population of 75,000 or fewer, may apply for a local financial support exemption option. An applicant exercising this option may not receive more than 80 percent of the total tax refunds allowed under the QTI program.

The Office of Tourism, Trade, and Economic Development reports that since the beginning of operations through December 31, 2001, the QTI program has resulted in 247 projects (active or complete), 58,219 direct jobs, and 64,001 indirect jobs, which paid on average \$36,702 annually.

⁸ Office of Tourism, Trade, and Economic Development, statistics released February, 2002.

⁹ *Programs Funded From the Economic Development Trust Incentives Account*, Office of Tourism, Trade, and Economic Development, 2001.

The 247 projects received \$220 million in QTI incentives and accounted for \$5.4 billion in capital investment.¹⁰

The Office of Tourism, Trade, and Economic Development contends that current economic conditions have compelled many QTI businesses to slow down expansion plans, causing them to fall short of employment goals. Rather than lose their QTI designation and incentives, these companies have asked for a grace period to allow them time to meet their job creation commitments as the economy improves.

C. EFFECT OF PROPOSED CHANGES:

Economic Development Trust Fund

The council substitute for the committee substitute helps improve the efficiency of the budgeting process for the Qualified Defense Contractor (QDC) and the Qualified Target Industry (QTI) tax refund programs. It requires Enterprise Florida, Inc., rather than OTTED, to submit an incentives program report to the Governor, the leadership of both houses, and to OTTED by December 31 each year. Enterprise Florida, Inc., must include in the report a separate analysis of the impact of tax refunds on brownfield areas, rural communities, and distressed urban communities.

Qualified Defense Contractor Tax Refund Program (QDC)

The bill allows QDC businesses that are unable to meet performance measures due to the economic downturn to request an economic stimulus exemption. The exemption provides a one-year grace period, making it possible for businesses to remain in the tax refund program and apply for future refunds when the economy rebounds. The bill expands the system for pro-rating tax refunds to allow businesses that would otherwise be excluded to apply for tax credits. The council substitute for the committee substitute revises the timeline for submittal and approval of QDC tax refund claims to improve the budgetary process and changes references to the Department of Labor & Employment Security to the Agency for Workforce Innovation to conform to other sections of Chapter 288, F.S.

Qualified Target Industry Tax Refund Program (QTI)

The bill allows QTI businesses that are unable to meet performance measures due to the economic downturn to request an economic stimulus exemption. The exemption provides a one-year grace period, making it possible for businesses to remain in the program and apply for future tax refunds when the economy rebounds. The bill expands the system for pro-rating tax refunds to allow businesses which otherwise would be excluded to apply for tax credits. The council substitute for the committee substitute revises the timeline for submittal and approval of QTI tax refund claims to improve the budgetary process and changes references to the Department of Labor & Employment Security to the Agency for Workforce Innovation to conform to other sections of Chapter 288, F.S.

Confidentiality and Information Sharing

The bill requires the Department of Revenue to share additional proprietary tax information with OTTED, including information relating to sales tax exemptions for the semiconductor, defense, and space industries.

¹⁰ Office of Tourism, Trade, and Economic Development, statistics released February, 2002.

D. SECTION-BY-SECTION ANALYSIS:

Section 1 – Economic Development Trust Fund

Amends s. 288.095, F.S., by conforming certain terminology to changes made in the timeline for approval of QDC and QTI tax refunds elsewhere in the bill. Revises the content and reassigns the responsibility from OTTED to Enterprise Florida, Inc., for completing and submitting the annual incentives report and changes the due date of the report from September 30 to December 31 of each year. Requires Enterprise Florida, Inc., to include a separate analysis of the impact of tax refunds on rural communities, brownfield areas, and distressed urban communities. Instructs OTTED to assist Enterprise Florida, Inc., in the collection of data related to business performance and incentive payments.

Section 2 – Qualified Defense Contractor Tax Refund Program

Amends s. 288.1045, (1)(e), F.S., changing the definition of “Department of Defense Contract” to include contracts for products for military use that are approved by the Department of Defense or the Department of State. Changes requirements for review by OTTED of applications for QDC tax refunds. Amends s. 288.1045(3)(e)5., F.S., to require applicants to show that a business unit derived at least 60 percent, rather than 70 percent, of its Florida gross receipts from Department of Defense contracts for the applicant’s last fiscal year and 60 percent, rather than 80 percent, of its Florida gross receipts from Department of Defense contracts during the previous five years.

Amends s. 288.1045, F.S., relating to the QDC approval and application process, by altering the timeline for approval of QDC tax refunds. Requires new QDC projects, or existing projects that request any modification of their agreement with OTTED, to submit tax refund claims by January 31 of each fiscal year for the jobs created by December 31 of the same fiscal year. Requires OTTED to pay refunds based on those claims from appropriations for the following fiscal year.

Amends s. 288.1045(4)(b), F.S., to provide that a QDC program business that does not fulfill its agreement with OTTED may request an “economic stimulus exemption” in lieu of any tax refund claim scheduled to be submitted after June 30, 2001, but before July 1, 2003. Requires OTTED to consider the extent to which negative economic conditions in the industry prevented the business from complying with the terms and conditions of its tax refund agreement. Requires the business to renegotiate the terms of its tax refund agreement with OTTED. Authorizes OTTED to extend the duration of the amended agreement for no more than one year. Prohibits a QDC business that receives an economic stimulus exemption from receiving a tax refund for the period covered by the exemption.

Requires a qualified applicant to include in its application to OTTED the number of *net new* full-time equivalent *Florida* jobs per project as of December 31 of each year.

Amends s. 288.1045(5)(g), F.S., to expand conditions for approving a prorated tax refund. Authorizes businesses to receive a prorated tax refund for achieving at least 80 percent of its agreed upon job targets and 90 percent of the average wage specified in the tax refund agreement with OTTED, but in no case less than 115 percent of the average private-sector wage in the area available at the time of the claim. Prescribes a method of calculating the prorated tax refund.

Creates s. 288.1045(6)(e), F.S., which expressly states that funds specifically appropriated for the QTI tax refund program may not be used for any purpose other than the payment of tax refunds authorized by s. 288.1045, F.S.

Section 3 – Qualified Target Industry Tax Refund Program (QTI)

Amends s. 288.106(3), F.S., the QTI approval and application process, by altering the timeline for approval of QTI tax refunds. Requires new QTI projects, or existing projects that request any modification of their agreement with OTTED, to submit tax refund claims by January 31 of each fiscal year for the jobs created by December 31 of the same fiscal year. Requires OTTED to pay refunds based on those claims from appropriations for the following fiscal year.

Provides that a QTI program business that does not fulfill its agreement with OTTED may request an “economic stimulus exemption” in lieu of any tax refund claim scheduled to be submitted after June 30, 2001, but before July 1, 2003. Requires OTTED to consider the extent to which negative economic conditions in the industry prevented the business from complying with the terms and conditions of its tax refund agreement. Requires the business to renegotiate the terms of its tax refund agreement with OTTED. Authorizes OTTED to extend the duration of the amended agreement for no more than one year. Prohibits a QTI business that receives an economic stimulus exemption from receiving a tax refund for the period covered by the exemption.

Amends s. 288.106(5)(d), F.S., expanding conditions for approving a prorated tax refund. Authorizes businesses to receive a prorated tax refund for achieving at least 80 percent of its job targets and at least 90 percent of the average wage specified in the tax refund agreement with OTTED, but in no case less than 115 percent of the average private-sector wage in the area available at the time of the claim, or 150 percent or 200 percent of the average private-sector wage if the business requested the additional per job tax refund authorized in paragraph (2)(b) for wages above those levels. Prescribes a method of calculating the prorated tax refund.

Creates s. 288.106(6)(c), F.S., which expressly states that funds specifically appropriated for the QTI tax refund program may not be used for any purpose other than the payment of tax refunds authorized by s. 288.106, F.S.

Section 4 – Confidentiality and Information Sharing

Amends s. 213.053(7)(k), F.S., to authorize the Department of Revenue to share certain proprietary tax information to an “agent of the office” in addition to the Office of Tourism, Trade, and Economic Development (OTTED). With respect to the Qualified Target Industry Tax Refund Program, requires the Department of Revenue to share with OTTED, or with an agent of the office, tax information under chapter 199, F.S., intangibles tax; chapter 201, F.S., excise tax on documents; chapter 220, F.S., corporate income tax; and chapter 221, F.S., emergency excise tax. Requires the Department of Revenue to share with OTTED, or with an agent of the office, information relative to credits taken by businesses under:

- section 220.191, F.S., the Capital Investment Tax Credit Program (CITC); and
- section 212.08(5)(j), sales and use tax exemptions for machinery and equipment used in semiconductor, defense, and space technology production and research and development.

Section 5 – Effective Date

Provides that the act shall take effect upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Businesses participating in the state's QDC and QTI tax refund programs may benefit by being allowed to remain in the programs though employment and salary goals cannot be currently met.

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority of counties and municipalities to raise total aggregate revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill is not expected to reduce the total aggregate percent of state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

At its February 6, 2002, meeting, the Committee on Economic Development and International Trade adopted a committee substitute for HB 779. The committee substitute differs from the original HB 779 in that it:

- changes the definition of “Department of Defense contract ” to include contracts for products for military use that are approved by the Department of Defense or the United States Department of State;
- lowers the Florida gross receipts criterion from 70% to 60% with respect to applications for the Qualified Defense Contractor Tax Refund Program;
- changes from April 1, 2002, to December 31, 2002, the certification date for “qualifying economic stimulus business” under the Capital Investment Tax Credit Program (CITC);
- changes the definition of a “qualifying economic stimulus project” under the CITC program. The committee substitute requires construction to begin after January 1, 2002, but on or before July 31, 2003 on such projects;
- stipulates that a business applying for a 40% pro-rated tax refund under the CITC program must begin construction after January 1, 2002, but on or before July 31, 2003; and
- expands the types of tax information that must be shared by the Department of Revenue with OTTED under s. 213.053, F.S.

At its March 4, 2002, meeting, the Council for Competitive Commerce adopted a council substitute for CS/HB 779. The council substitute for the committee substitute differs from CS/HB 779 in that it:

- deletes the Capital Investment Tax Credit provisions of the bill; and
- deletes provisions from the QDC portion of the bill that would have provided for a qualified aviation industry tax refund.

VII. SIGNATURES:

COMMITTEE ON ECONOMIC DEVELOPMENT AND INTERNATIONAL TRADE:

Prepared by:

Lisa C. Gonzalez

Staff Director:

J. Paul Whitfield, Jr.

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AS FURTHER REVISED BY THE COUNCIL FOR COMPETITIVE COMMERCE:

Prepared by:

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