

1 A bill to be entitled
2 An act relating to the Florida Small Manufacturing
3 Business Recovery Act; creating s. 288.715, F.S.;
4 providing a short title; defining terms; requiring the
5 Department of Economic Opportunity to accept
6 applications for certification of relief funds and
7 relief contributions in a specified manner; specifying
8 information required to be submitted in an
9 application; requiring the department to approve or
10 deny applications within a specified timeframe;
11 prohibiting the department from approving more than a
12 specified amount of relief investment authority and
13 relief contributions; requiring the department to deny
14 applications under certain circumstances; requiring
15 the department to provide notice of approval or denial
16 to applicants; requiring the department to certify
17 approved applications; authorizing applicants whose
18 applications were denied to provide additional
19 information within a certain timeframe to cure defects
20 in their applications; requiring the department to
21 reconsider such applications; requiring certified
22 relief funds to collect contributions and investments
23 and submit certain documentation within a specified
24 timeframe; requiring the department to revoke relief
25 funds' certification under certain circumstances;

26 requiring the department to give notice relating to
27 tax credit certificates; providing requirements
28 relating to lapsed or revoked investment authority;
29 authorizing nonrefundable tax credits for owners of
30 tax credit certificates issued by the department;
31 providing restrictions on the credit; requiring
32 taxpayers to submit a copy of the tax credit
33 certificate with the taxpayers' annual statements;
34 authorizing the department to revoke tax credit
35 certificates under certain circumstances; prohibiting
36 certain amounts invested in impact businesses from
37 being counted as a relief investment; authorizing
38 certain relief funds to apply to the department to be
39 decertified; providing procedures for decertification;
40 authorizing a relief fund to request certain opinions
41 from the department; requiring relief funds to submit
42 specified reports to the department; authorizing the
43 department to adopt rules; providing an effective
44 date.

45
46 Be It Enacted by the Legislature of the State of Florida:

47
48 Section 1. Section 288.715, Florida Statutes, is created
49 to read:

50 288.715 The Florida Small Manufacturing Business Recovery

51 Act.—

52 (1) This section may be cited as the "Florida Small
 53 Manufacturing Business Recovery Act."

54 (2) As used in this section, the term:

55 (a) "Affiliate" means a person that directly, or
 56 indirectly through one or more intermediaries, controls, is
 57 controlled by, or is under common control with another person.
 58 For the purposes of this paragraph, a person is "controlled by"
 59 another person if the controlling person holds, directly or
 60 indirectly, the majority voting or ownership interest in the
 61 controlled person or has control over the day-to-day operations
 62 of the controlled person by contract or by law.

63 (b) "Closing date" means the date on which a relief fund
 64 has collected the amounts specified in paragraph (3) (f).

65 (c) "Department" means the Department of Economic
 66 Opportunity.

67 (d) "Impact business" means a business that, at the time
 68 of the initial relief investment by a relief fund:

- 69 1. Has fewer than 200 employees;
- 70 2. Has its principal business operations in this state;

71 and

- 72 3. Is engaged in the North American Industry
 73 Classification System codes 31-33 or, if not engaged in such
 74 industries, the department determines that an investment in the
 75 business will be beneficial to this state's recovery.

76
77 For the purposes of this paragraph, a business has its principal
78 business operations in this state if at least 60 percent of the
79 business' employees reside in this state, at least 80 percent of
80 the business' payroll is paid to individuals who reside in this
81 state, or the business has agreed to use the proceeds of a
82 relief investment to relocate at least 60 percent of the
83 business' employees to this state or pay at least 80 percent of
84 the business' payroll to individuals residing in this state.

85 (e) "Premium taxes" means taxes imposed under s. 624.509
86 or s. 624.5091.

87 (f) "Relief contribution" means a cash investment in a
88 relief fund which equals the amount specified on a notice of tax
89 credit allocation issued by the department under paragraph
90 (3)(h). The investment must purchase an equity interest in the
91 relief fund or purchases, at par value or premium, a debt
92 instrument issued by the relief fund which has an original
93 maturity date of at least 5 years after the date of issuance and
94 a repayment schedule that is no greater than level principal
95 amortization over 5 years.

96 (g) "Relief fund" means an entity certified by the
97 department under paragraph (3)(e).

98 (h) "Relief investment" means any capital or equity
99 investment in an impact business or any loan to an impact
100 business which has a stated maturity at least 2 years after the

101 date of issuance. A secured loan is a relief investment only if
102 it has an initial interest rate of less than 2 percent or
103 principal and interest payments deferred for at least 1 year. A
104 subordinate loan is a relief investment only if it has an
105 initial interest rate of less than 6 percent or principal and
106 interest payments deferred for at least 1 year. An equity
107 investment is a relief investment only if the relief fund does
108 not acquire a majority interest in the small business as a
109 result of such investment. The term "relief investment" does not
110 include any transaction that includes an origination fee.

111 (i) "Relief investment authority" means the amount stated
112 on the notice issued under paragraph (3) (e) certifying the
113 relief fund. Eighty percent of a relief fund's relief investment
114 authority must consist of relief contributions.

115 (j) "Small business" means any business that has its
116 principal business operations in this state, as described in
117 paragraph (d), and which, at the time the initial relief
118 investment is made, has fewer than 250 employees or the number
119 of employees set forth for the business' North American Industry
120 Classification System code under 13 C.F.R. s. 121.201, whichever
121 is greater.

122 (3) (a) Beginning August 1, 2021, the department shall
123 accept applications for certification of relief funds and relief
124 contributions. The application must include:

125 1. The total relief investment authority sought by the

126 applicant;

127 2. Evidence that proves, to the satisfaction of the
128 department, that:

129 a. The applicant or an affiliate of the applicant is a
130 federally approved or licensed rural business investment company
131 under 7 U.S.C. s. 2009cc or a small business investment company
132 under 15 U.S.C. s. 681. The applicant must include a certificate
133 executed by an executive officer of the applicant attesting that
134 the approval or license remains in effect and has not been
135 revoked;

136 b. At least one principal or similar officer of such
137 entity is, and has been for at least 4 years, an officer or
138 employee of the applicant or an affiliate of the applicant on
139 the date the application is submitted; and

140 c. As of the date the application is submitted, the
141 applicant and its affiliates have invested more than \$500
142 million in small businesses, regardless of whether the principal
143 business operations of the small business are in this state; and

144 3. A signed affidavit from each investor stating that the
145 investor agrees to make a relief contribution and the amount of
146 the relief contribution.

147 (b)1. Except as provided in subparagraph 2., the
148 department shall approve or deny an application within 30 days
149 after receiving the application. The department shall deem
150 applications received on the same day as having been received

151 simultaneously. The department may not approve more than \$100
152 million in relief investment authority and may not approve more
153 than \$80 million in relief contributions. If approving
154 simultaneously submitted applications would result in exceeding
155 these limits, the department shall proportionally reduce the
156 relief investment authority and the relief contributions for
157 each approved application as necessary to avoid exceeding the
158 limit.

159 2. If the department denies an application for
160 certification as a relief fund, and approving a subsequently
161 submitted application would result in exceeding the dollar
162 limitation on relief investment authority or relief
163 contributions, assuming the previously denied application was
164 completed, clarified, or cured under subparagraph (e)2., the
165 agency may not make a determination on the subsequently
166 submitted application until the previously denied application is
167 reconsidered or the 15-day period for submitting additional
168 information regarding that application has passed, whichever
169 occurs first.

170 (c) The department must deny an application if:

171 1. The application is incomplete, including failing to
172 submit the affidavits accounting for at least 80 percent of the
173 relief investment authority sought;

174 2. The applicant does not satisfy the requirements of
175 subparagraph (a)2.; or

176 3. The department has already approved the maximum total
177 relief investment authority and relief contributions authorized
178 under subparagraph (b)1.

179 (d) The department may not deny a relief fund application
180 or reduce the requested relief investment authority for reasons
181 other than those described in paragraphs (b) and (c).

182 (e)1. If the department approves an application, the
183 department must issue a written notice to the applicant
184 certifying the applicant as a relief fund and specifying the
185 applicant's amount of relief investment authority.

186 2. If the department denies an application, the department
187 must notify the applicant of the reasons for denial. If the
188 application was denied for any reason other than a reason
189 specified in paragraph (c) or because the applicant failed to
190 satisfy subparagraph (a)3., the applicant may submit additional
191 information to the agency to cure defects in the application
192 within 15 days after receipt of the notice of denial. The
193 department must reconsider such application within 15 days after
194 receiving any additional information and, if the application is
195 approved, treat it as approved as of its original filing date.

196 (f) Within 30 days after receiving a certification under
197 paragraph (e), a relief fund must:

198 1. Collect the relief contributions from each investor
199 whose affidavit was included in the application; and

200 2. Collect direct or indirect equity investments from

201 affiliates of the relief fund, including employees, officers,
202 and directors of such affiliates, equal to at least 10 percent
203 of the relief fund's investment authority.

204 (g) Within 35 days after receiving certification under
205 paragraph (e), a relief fund must send documentation to the
206 department which proves the relief fund has collected the
207 amounts required under paragraph (f). If the relief fund fails
208 to comply with this paragraph, the department shall revoke the
209 relief fund's certification.

210 (h) After a relief fund satisfies the requirement under
211 paragraph (g), the department shall issue to each investor or
212 affiliate identified under paragraph (g) a notice of the amount
213 and utilization schedule of the tax credit certificates
214 allocated to the investor or affiliate as a result of the
215 investor or affiliate's relief contribution.

216 (i) If a relief fund's certification is revoked under
217 paragraph (g) or the relief fund has tax credits revoked under
218 paragraph (5) (b), the corresponding relief investment authority
219 and relief contributions do not count toward limits on total
220 relief investment authority and relief contributions authorized
221 under paragraph (b). The department shall first award lapsed or
222 revoked relief investment authority and the corresponding relief
223 contributions pro rata to each relief fund awarded less than the
224 relief investment authority for which it applied pursuant to
225 subparagraph (b)1. The department may award any remaining relief

226 investment authority to new applicants.

227 (4) (a) A nonrefundable tax credit certificate is
228 authorized for owners of tax credit certificates issued by the
229 department under paragraph (b). The credit may be claimed
230 against premium taxes and is transferable to any person that
231 pays premium taxes in this state.

232 (b) On the closing date, a taxpayer that made a relief
233 contribution is eligible for a credit equal to the amount
234 specified in the notice issued under paragraph (3) (h). On or
235 before the anniversaries of the closing date occurring in 2023,
236 2024, 2025, 2026, and 2027, the department shall issue a tax
237 credit certificate equal to one-fifth of the relief
238 contributions allocated to the taxpayer.

239 (c) Any amount of credits which exceeds the tax otherwise
240 due for that year may be carried forward for any ensuing taxable
241 years. An additional retaliatory tax may not be required as a
242 result of using the credit. A taxpayer claiming a credit under
243 this section shall submit a copy of the tax credit certificate
244 with the taxpayer's annual statement for each taxable year in
245 which the credit is claimed.

246 (5) (a) The department is not required to issue a tax
247 credit certificate to a relief fund that does not invest at
248 least 70 percent of its relief investment authority in relief
249 investments within 1 year after the closing date or 100 percent
250 of its relief investment authority in relief investments within

251 2 years after the closing date.

252 (b) The department may revoke tax credit certificates
253 issued pursuant to subsection (4) if:

254 1. Before satisfying paragraph (a), the relief fund makes
255 a distribution or payment in excess of the cumulative investment
256 earnings of the relief fund as of the date of the distribution
257 or payment, taking into account all past distributions and
258 payments;

259 2. After satisfying paragraph (a), the relief fund fails
260 to maintain those levels of investment until the fifth
261 anniversary of the closing date. For the purposes of this
262 subparagraph, an investment is maintained even if the investment
263 is sold or repaid, so long as the relief fund reinvests an
264 amount equal to the capital returned or recovered from the
265 original investment, exclusive of any profits realized, in other
266 relief investments in this state within 1 year of the receipt of
267 such capital. Regularly scheduled principal payments on a loan
268 that is a relief investment are deemed continuously invested in
269 a relief investment if the amounts are reinvested in one or more
270 relief investments by the end of the following calendar year; or

271 3. After satisfying paragraph (a) and before the relief
272 fund is decertified pursuant to paragraph (d), the relief fund
273 makes a distribution or payment that results in the relief fund
274 having less than 100 percent of its relief investment authority
275 invested in relief investments or held in cash or marketable

276 securities available for investment in relief investments.

277
278 The department must notify the relief fund of the reasons for
279 revocation before revoking tax credit certificates pursuant to
280 this paragraph. If, within 30 days after the department sends
281 such notice, the relief fund corrects the reasons given in the
282 notice to the satisfaction of the department, the department may
283 not revoke the tax credit certificates.

284 (c) The amount by which one or more relief investments by
285 a relief fund in the same impact business exceeds \$3.5 million
286 may not be counted as a relief investment for the purposes of
287 this section, exclusive of capital repaid or redeemed by such
288 small business and reinvested as a relief investment in such
289 small business. A relief investment in an affiliate of an impact
290 business shall be treated as a relief investment in that impact
291 business for the purposes of this paragraph.

292 (d)1. On or after the sixth anniversary of the closing
293 date, a relief fund that has invested 100 percent of its relief
294 investment authority in relief investments may apply to the
295 department to be decertified as a relief fund. The department
296 shall respond to and not unreasonably deny the application
297 within 60 days after receiving the application. In evaluating
298 the application, the fact that no tax credit certificates have
299 been revoked with respect to the relief fund shall be evidence
300 to prove that the relief fund is eligible for decertification.

301 2. The department shall send notice to the relief fund of
302 its determination with respect to decertification and reasons
303 for denial, if applicable.

304 3. The department may not revoke a tax credit certificate
305 due to any actions of a relief fund which occur after
306 decertification, but the department may revoke tax credit
307 certificates due to the actions of a relief fund which occur
308 before decertification even if such actions are discovered after
309 the date of decertification.

310 (e) A relief fund may request a written opinion from the
311 department as to whether a business qualifies as an impact
312 business. The department shall issue a written opinion to the
313 relief fund within 10 business days after receiving such a
314 request. If the department determines that the business
315 qualifies as an impact business or if the department fails to
316 timely issue the written opinion, the business shall be
317 considered a small business or impact business for the purposes
318 of this section.

319 (6) (a) Each relief fund shall submit a report to the
320 department on or before April 1 of each year, including the
321 closing date year, until the calendar year after the relief fund
322 is decertified. The report must provide an itemization of the
323 relief fund's relief investments and must include the following
324 documents and information:

325 1. A bank statement evidencing each relief investment;

326 2. The name, location, and industry class of each impact
327 business that received a relief investment from the relief fund
328 and evidence that the business qualified as an impact business
329 at the time the investment was made, if applicable;

330 3. The jobs created and retained as a result of each
331 relief investment; and

332 4. Any other information required by the department.

333 (b) Each relief fund shall submit a report to the
334 department on or before the fifth business day after the first
335 and second anniversaries of the closing date which provides
336 documentation to prove that the relief fund has met the
337 investment thresholds required in paragraph (5) (a) and has not
338 violated any of the other revocation provisions described in
339 paragraph (5) (b).

340 (7) The department may adopt rules to implement this
341 section.

342 Section 2. This act shall take effect July 1, 2021.