

By the Committee on Finance and Tax; and Senator Wright

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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

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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 to
49 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 indirectly
56 through one or more intermediaries, controls, is controlled by,
57 or is under common control with another person. For the purposes
58 of this paragraph, a person is "controlled by" another person if

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59 the controlling person holds, directly or indirectly, the
60 majority voting or ownership interest in the controlled person
61 or has control over the day-to-day operations of the controlled
62 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 of
68 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; and

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

75
76 For the purposes of this paragraph, a business has its principal
77 business operations in this state if at least 60 percent of the
78 business' employees reside in this state, at least 80 percent of
79 the business' payroll is paid to individuals who reside in this
80 state, or the business has agreed to use the proceeds of a
81 relief investment to relocate at least 60 percent of the
82 business' employees to this state or pay at least 80 percent of
83 the business' payroll to individuals residing in this state.

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

86 (f) "Relief contribution" means a cash investment in a
87 relief fund which equals the amount specified on a notice of tax

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

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

97 (h) "Relief investment" means any capital or equity
98 investment in an impact business or any loan to an impact
99 business which has a stated maturity at least 2 years after the
100 date of issuance. A secured loan is a relief investment only if
101 it has an initial interest rate of less than 2 percent or
102 principal and interest payments deferred for at least 1 year. A
103 subordinate loan is a relief investment only if it has an
104 initial interest rate of less than 6 percent or principal and
105 interest payments deferred for at least 1 year. An equity
106 investment is a relief investment only if the relief fund does
107 not acquire a majority interest in the small business as a
108 result of such investment. The term "relief investment" does not
109 include any transaction that includes an origination fee.

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

114 (j) "Small business" means any business that has its
115 principal business operations in this state, as described in
116 paragraph (d), and which, at the time the initial relief

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117 investment is made, has fewer than 250 employees or the number
118 of employees set forth for the business' North American Industry
119 Classification System code under 13 C.F.R. s. 121.201, whichever
120 is greater.

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

124 1. The total relief investment authority sought by the
125 applicant;

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

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

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

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

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

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146 (b)1. Except as provided in subparagraph 2., the department
147 shall approve or deny an application within 30 days after
148 receiving the application. The department shall deem
149 applications received on the same day as having been received
150 simultaneously. The department may not approve more than \$100
151 million in relief investment authority and may not approve more
152 than \$80 million in relief contributions. If approving
153 simultaneously submitted applications would result in exceeding
154 these limits, the department shall proportionally reduce the
155 relief investment authority and the relief contributions for
156 each approved application as necessary to avoid exceeding the
157 limit.

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

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

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

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

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

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

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

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

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

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

199 2. Collect direct or indirect equity investments from
200 affiliates of the relief fund, including employees, officers,
201 and directors of such affiliates, equal to at least 10 percent
202 of the relief fund's investment authority; and

203 3. For each investor seeking a tax credit certificate,

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204 provide the department with the investor's federal employer
205 identification number, if a business, or the investor's social
206 security number, if an individual.

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

213 (h) After a relief fund satisfies the requirement under
214 paragraph (g), the department shall issue to each investor or
215 affiliate identified under paragraph (g) a notice of the amount
216 and utilization schedule of the tax credit certificates
217 allocated to the investor or affiliate as a result of the
218 investor or affiliate's relief contribution. The department
219 shall provide the Department of Revenue, for each person who is
220 allocated tax credit certificates, the person's name, the amount
221 of the credit allocation, the utilization schedule, the
222 information required by subparagraph (f)3., and the closing date
223 of the relief fund to which the person made a relief
224 contribution.

225 (i) If a relief fund's certification is revoked under
226 paragraph (g) or the relief fund has tax credits revoked under
227 paragraph (5)(b), the corresponding relief investment authority
228 and relief contributions do not count toward limits on total
229 relief investment authority and relief contributions authorized
230 under paragraph (b). The department shall first award lapsed or
231 revoked relief investment authority and the corresponding relief
232 contributions pro rata to each relief fund awarded less than the

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233 relief investment authority for which it applied pursuant to
234 subparagraph (b)1. The department may award any remaining relief
235 investment authority to new applicants. The department shall
236 notify the Department of Revenue of lapsed or revoked relief
237 investment authority.

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

243 (b) On the closing date, a taxpayer that made a relief
244 contribution is eligible for a credit equal to the amount
245 specified in the notice issued under paragraph (3) (h). On or
246 before the anniversaries of the closing date occurring in 2023,
247 2024, 2025, 2026, and 2027, the department shall issue a tax
248 credit certificate equal to one-fifth of the relief
249 contributions allocated to the taxpayer.

250 (c) Any amount of credits which exceeds the tax otherwise
251 due for that year may be carried forward for any ensuing taxable
252 years. An additional retaliatory tax may not be required as a
253 result of using the credit. A taxpayer claiming a credit under
254 this section shall submit a copy of the tax credit certificate
255 with the taxpayer's annual statement for each taxable year in
256 which the credit is claimed.

257 (5) (a) The department is not required to issue a tax credit
258 certificate to a relief fund that does not invest at least 70
259 percent of its relief investment authority in relief investments
260 within 1 year after the closing date or 100 percent of its
261 relief investment authority in relief investments within 2 years

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262 after the closing date.

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

265 1. Before satisfying paragraph (a), the relief fund makes a
266 distribution or payment in excess of the cumulative investment
267 earnings of the relief fund as of the date of the distribution
268 or payment, taking into account all past distributions and
269 payments;

270 2. After satisfying paragraph (a), the relief fund fails to
271 maintain those levels of investment until the fifth anniversary
272 of the closing date. For the purposes of this subparagraph, an
273 investment is maintained even if the investment is sold or
274 repaid, so long as the relief fund reinvests an amount equal to
275 the capital returned or recovered from the original investment,
276 exclusive of any profits realized, in other relief investments
277 in this state within 1 year of the receipt of such capital.
278 Regularly scheduled principal payments on a loan that is a
279 relief investment are deemed continuously invested in a relief
280 investment if the amounts are reinvested in one or more relief
281 investments by the end of the following calendar year; or

282 3. After satisfying paragraph (a) and before the relief
283 fund is decertified pursuant to paragraph (d), the relief fund
284 makes a distribution or payment that results in the relief fund
285 having less than 100 percent of its relief investment authority
286 invested in relief investments or held in cash or marketable
287 securities available for investment in relief investments.

288
289 The department must notify the relief fund of the reasons for
290 revocation before revoking tax credit certificates pursuant to

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291 this paragraph. If, within 30 days after the department sends
292 such notice, the relief fund corrects the reasons given in the
293 notice to the satisfaction of the department, the department may
294 not revoke the tax credit certificates.

295 (c) The amount by which one or more relief investments by a
296 relief fund in the same impact business exceeds \$3.5 million may
297 not be counted as a relief investment for the purposes of this
298 section, exclusive of capital repaid or redeemed by such small
299 business and reinvested as a relief investment in such small
300 business. A relief investment in an affiliate of an impact
301 business shall be treated as a relief investment in that impact
302 business for the purposes of this paragraph.

303 (d)1. On or after the sixth anniversary of the closing
304 date, a relief fund that has invested 100 percent of its relief
305 investment authority in relief investments may apply to the
306 department to be decertified as a relief fund. The department
307 shall respond to and not unreasonably deny the application
308 within 60 days after receiving the application. In evaluating
309 the application, the fact that no tax credit certificates have
310 been revoked with respect to the relief fund shall be evidence
311 to prove that the relief fund is eligible for decertification.

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

315 3. The department may not revoke a tax credit certificate
316 due to any actions of a relief fund which occur after
317 decertification, but the department may revoke tax credit
318 certificates due to the actions of a relief fund which occur
319 before decertification even if such actions are discovered after

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320 the date of decertification.

321 (e) A relief fund may request a written opinion from the
322 department as to whether a business qualifies as an impact
323 business. The department shall issue a written opinion to the
324 relief fund within 10 business days after receiving such a
325 request. If the department determines that the business
326 qualifies as an impact business or if the department fails to
327 timely issue the written opinion, the business shall be
328 considered a small business or impact business for the purposes
329 of this section.

330 (6) (a) Each relief fund shall submit a report to the
331 department on or before April 1 of each year, including the
332 closing date year, until the calendar year after the relief fund
333 is decertified. The report must provide an itemization of the
334 relief fund's relief investments and must include the following
335 documents and information:

- 336 1. A bank statement evidencing each relief investment;
- 337 2. The name, location, and industry class of each impact
338 business that received a relief investment from the relief fund
339 and evidence that the business qualified as an impact business
340 at the time the investment was made, if applicable;
- 341 3. The jobs created and retained as a result of each relief
342 investment; and
- 343 4. Any other information required by the department.

344 (b) Each relief fund shall submit a report to the
345 department on or before the fifth business day after the first
346 and second anniversaries of the closing date which provides
347 documentation to prove that the relief fund has met the
348 investment thresholds required in paragraph (5) (a) and has not

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349 violated any of the other revocation provisions described in
350 paragraph (5)(b).

351 (7) The department may adopt rules to implement this
352 section.

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