

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Finance and Tax

BILL: SB 1444

INTRODUCER: Senator Wright

SUBJECT: Florida Small Manufacturing Business Recovery Act

DATE: March 30, 2021

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|--------------|----------------|-----------|--------------------|
| 1. | <u>Reeve</u> | <u>McKay</u> | <u>CM</u> | Favorable |
| 2. | <u>Kim</u> | <u>Babin</u> | <u>FT</u> | Pre-meeting |
| 3. | _____ | _____ | <u>AP</u> | _____ |

I. Summary:

SB 1444 creates s. 288.715, F.S., the Florida Small Manufacturing Business Recovery Act. The bill allows investors to earn credits against the insurance premium tax and retaliatory tax equal to their investment in certified relief funds; in turn, the relief funds will invest in certain businesses. The bill caps investment at a level that will result in no more than \$80 million in tax credits under the program.

The Department of Economic Opportunity (DEO) will administer the program by certifying relief funds, granting tax credits to investors, and, if necessary, revoking a relief fund's tax credit authority.

The Revenue Estimating Conference determined that the bill will reduce General Revenue Fund receipts by \$16 million beginning in Fiscal Year 2023-2024, and by \$16 million each fiscal year thereafter.

The bill takes effect July 1, 2021.

II. Present Situation:

Economic Development Incentives that use Tax Credits

Capital Investment Tax Credit

The Capital Investment Tax Credit was created to attract and grow capital-intensive industries in the state by offering an annual tax credit equal to 5 percent of the eligible capital costs generated by a qualifying project. The tax credit offered may only be used against the corporate income tax or insurance premium tax liability generated by or arising out of a qualifying project.¹ Qualifying

¹ Section 220.191, F.S.

projects are in high-impact portions of the clean energy, life sciences, financial services, information technology, semi-conductor, transportation equipment manufacturing, advanced manufacturing, or corporate headquarters facility industries. In calendar year 2019, the DEO approved over \$67 million in capital investment tax credits.²

Rural Job Tax Credit Program

The Florida Rural Job Tax Credit Program offers a tax credit incentive for eligible businesses that are located within a designated qualified rural area to create new jobs.³ The tax credit ranges from \$1,000 to \$1,500 per qualified employee and can be taken against either the businesses' corporate income tax or sales and use tax liabilities. A business is limited to no more than \$500,000 of tax credits per year.⁴ The DEO administers this program and may approve up to \$5 million in tax credits per year. In calendar year 2019, the DEO approved \$100,000 in rural job tax credits.⁵

Florida New Markets Development Program⁶

The Florida New Markets Development Program (NMDP), similar to the program created in this bill, uses tax credits to spur economic development. The NMDP allows Florida taxpayers to earn tax credits against corporate income tax or insurance premium tax liability by investing in qualified community development entities (CDEs) that make investments in qualified low-income community businesses. CDEs are domestic corporations or partnerships that have a primary role in administering the tax credit program and act as intermediaries between the investors, financiers, and low-income community businesses. The NMDP is modeled after the federal New Markets Tax Credit program.⁷ The NMDP is capped at a cumulative investment that would result in no more than \$216.34 million in tax credits, and an annual investment that would result in no more than \$36.6 million in a single fiscal year.⁸ The NMDP has exhausted its credit allocation. It has not issued tax credits since Fiscal Year 2014-2015.⁹

Examples of Acts in Other States

In 2017, Georgia created the Georgia Agribusiness and Rural Jobs Act, which is designed to spur \$100 million in capital investments in rural businesses in the state. Investors may redeem up to \$15 million in tax credits annually for four years (for a total of \$60 million tax credits) against their corporate income tax and premium tax liabilities.¹⁰ While Georgia's tax credit program incentivizes investment in rural businesses instead of manufacturing businesses, the program's

² Department of Economic Opportunity, *2019-2020 Incentives Report*, 49, available at https://floridajobs.org/docs/default-source/reports-and-legislation/2019-2020-annual-incentives-report-final.pdf?sfvrsn=af674ab0_2 (last visited Mar. 24, 2021).

³ Sections 212.098 and 220.1895, F.S.

⁴ Section 212.098(6)(d), F.S.

⁵ *Supra* note 2.

⁶ Sections 288.991-.9922, F.S.

⁷ Office of Economic and Demographic Research, *Economic Evaluation for Select State Economic Development Incentive Programs*, 33-37 (Jan. 2020), available at <http://www.edr.state.fl.us/Content/returnoninvestment/ROISELECTPROGRAMS2020final.pdf> (last visited Mar. 24, 2021).

⁸ Section 288.9914(3)(c), F.S.

⁹ Florida Dep't of Economic Opportunity, *2017 Incentives Report*, 11, available at <http://www.floridajobs.org/docs/default-source/reports-and-legislation/2017-annual-incentives-report.pdf?sfvrsn=4> (last visited Mar. 24, 2021).

¹⁰ Ga. Code Annotated s. 33-1-25, *et seq.* (2017).

structure is similar to that of the proposed bill. Similar legislation directed towards other industries has been proposed in several other states, including Kentucky¹¹ and Washington.¹²

Additionally, the federal New Markets Tax Credit Program is structurally similar to the program created by the bill. The federal program, which offers investors a credit against the federal income tax in exchange for making equity investments in Community Development Entities (CDEs), was extended through 2025 with a \$5 billion annual appropriation under the federal Consolidated Appropriations Act, 2021.¹³ Several CDEs are actively financing businesses in Florida under the federal program.¹⁴

Insurance Premium Tax and Retaliatory Tax

Florida imposes on insurers a tax on insurance premiums. For the tax imposed by s. 624.509, F.S., tax is due on:

- Insurance premiums;
- Premiums for title insurance;
- Assessments, including membership fees and policy fees and gross deposits received from subscribers to reciprocal or interinsurance agreements; and
- Annuity premiums or considerations.

The general tax rate is 1.75 percent of gross receipts on account of life and health insurance policies covering Florida residents and on account of all other types of policies and contracts covering property, subjects, or risks located, resident, or to be performed in Florida, minus reinsurance and return premiums.¹⁵ Annuity policies or contracts held in Florida are taxed at 1 percent of gross receipts, and direct written premiums for bail bonds are taxed at 1.75 percent, excluding any amounts retained by licensed bail bond agents or appointed managing general agents.¹⁶ The insurance premium tax is collected by the Department of Revenue (DOR) and distributed to the General Revenue Fund.¹⁷

Florida imposes a retaliatory tax on foreign or alien insurers if the other state or country where the insurer is domiciled imposes a greater tax burden on Florida insurers, or their agents or representatives, in excess of what the state or country imposes on such entities that are domiciled in that state or country.¹⁸ The retaliatory tax is calculated by first calculating the foreign or alien insurer's Florida premium tax liability, and then calculating the insurer's liability as if its Florida premiums were written in the jurisdiction where it is domiciled and its Florida employees and

¹¹ Kentucky House Bill 203 (2019), <https://apps.legislature.ky.gov/record/19rs/hb203.html> (last visited Mar. 24, 2021).

¹² Doug Farquhar, *Jump-Starting Rural Economies* (Apr. 2018), available at <http://www.ncsl.org/research/environment-and-natural-resources/jump-starting-rural-economies.aspx> (last visited Mar. 24, 2021).

¹³ Consolidated Appropriations Act, H.R. 133, 116th Cong., s. 112, (2020).

¹⁴ United States Department of the Treasury, *New Markets Tax Credit Qualified Equity Investment Report (March 2021)*, available at <https://www.cdfifund.gov/sites/cdfi/files/2021-03/NMTC%20QEI%20Issuance%20Report-March%202021.pdf> (last visited Mar. 24, 2021).

¹⁵ Section 624.509(1), F.S.

¹⁶ *Id.*

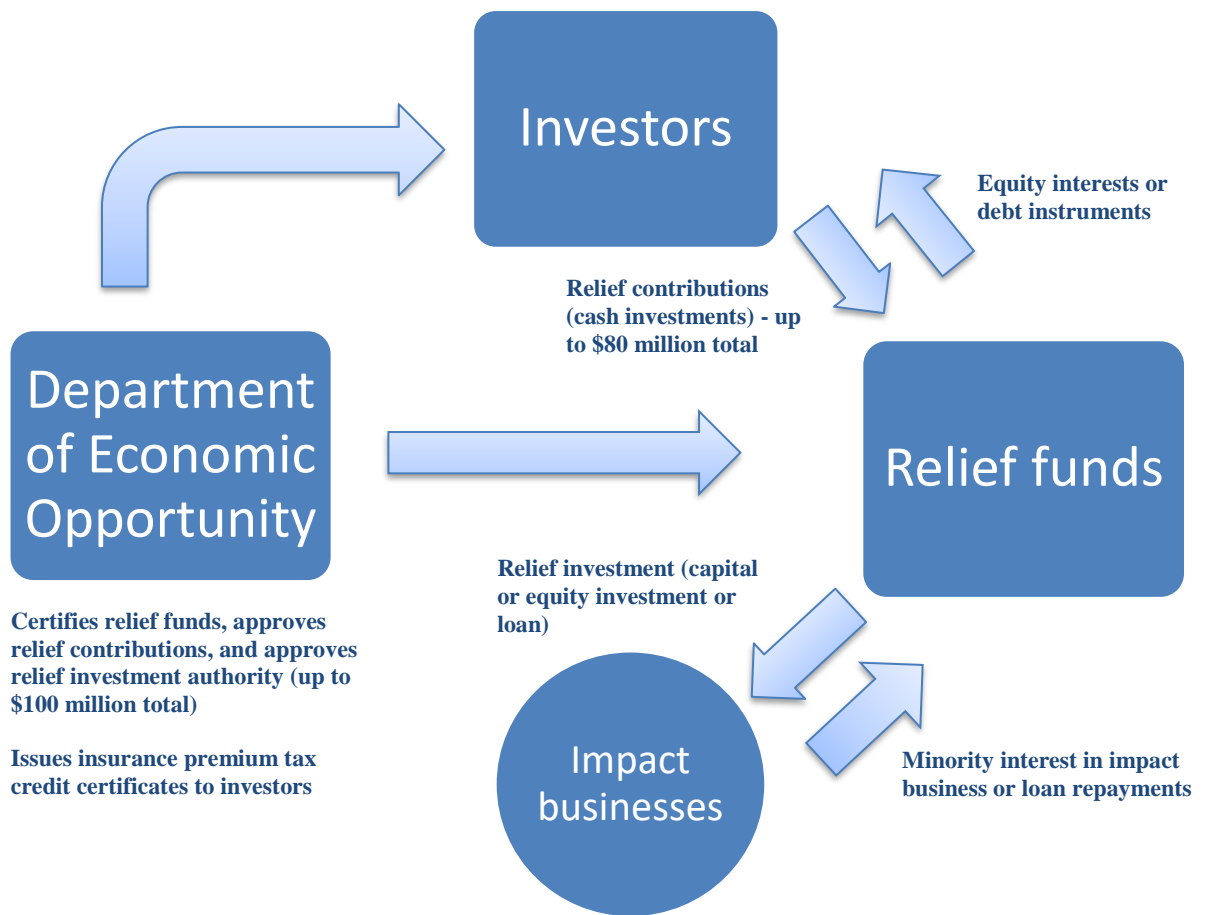
¹⁷ Section 624.509(3), F.S.

¹⁸ *See* s. 624.5091, F.S.

property were located in that jurisdiction.¹⁹ After adjusting both calculations for various credits, other taxes, and fees, the retaliatory tax due, if any, is equal to the amount that taxes imposed by other jurisdiction exceed those imposed under Florida law.²⁰ Retaliatory taxes are collected by the DOR and deposited into the Insurance Regulatory Trust Fund up to an annually adjusted amount, with the remainder deposited into the General Revenue Fund.²¹

III. Effect of Proposed Changes:

The bill creates s. 288.715, F.S., the Florida Small Manufacturing Business Recovery Act, to be administered by the DEO. The bill uses tax credits against the state insurance premium tax and retaliatory tax to incentivize certain investors to make cash investments, known as “relief contributions,” to certified relief funds that, in turn, will make capital or equity investments in, or loans with a maturity date of at least 2 years to, an impact business. The total relief investment authority is capped at \$100 million and relief contributions are capped at \$80 million. The following provides a simplified overview:



¹⁹ Senate Committee on Finance and Tax, *An Overview of Florida’s Insurance Premium Tax*, Report Number 2007-122, 7, October 2006, available at http://archive.flsenate.gov/data/publications/2007/senate/reports/interim_reports/pdf/2007-122ftlong.pdf (last visited March 24, 2021).

²⁰ *Id.*

²¹ Section 624.5091(5), F.S.

An impact business is one that, at the time of the initial investment by the relief fund:

- Has fewer than 200 employees;
- Has its principal business operations in Florida. A business has its principal business operations in the state if at least 60 percent of the business's employees are Florida residents, at least 80 percent of the business's payroll is paid to Florida residents, or the business has agreed to use the proceeds of a relief investment to relocate at least 60 percent of the business's employees to Florida or pay at least 80 percent of the business's payroll to Florida residents; and
- Is engaged in manufacturing under North American Industry Classification System code 31-33. A business not engaged in manufacturing is considered an impact business under the bill if the DEO has determined that an investment in such a business will benefit the state's recovery.

Tax Credit Application, Approval, and Allocation

Beginning August 1, 2021, the DEO must accept applications for certification of relief funds and relief contributions. Applications must include:

- The total relief investment authority²² sought by the applicant, 80 percent of which must consist of relief contributions;
- Evidence that an applicant or an affiliate of the applicant is licensed as a rural business investment company or small business investment company;²³
- Evidence that at least one principal of the rural or small business investment company is, and has been for at least 4 years, an officer, employee, or affiliate of the applicant on the date the application is submitted;
- Evidence that the applicant and its affiliates have invested more than \$500 million in small businesses, regardless of whether the principal businesses operations of the small business are in the state; and
- A signed affidavit from each investor stating that the investor agrees to make a relief contribution,²⁴ and the amount of the relief contribution.

The DEO must approve or deny an application within 30 days of its receipt. The DEO must deny an application if:

- The application is incomplete, including failing to submit the affidavits accounting for at least 80 percent of the relief investment authority sought;
- The application does not include evidence proving the relief fund is eligible for certification; or
- The DEO has already approved the maximum total relief investment authority and relief contributions.

The total relief investment authority is capped at \$100 million and relief contributions are capped at \$80 million.

²² "Relief investment authority" means the amount stated on the notice certifying a relief fund issued by the DEO.

²³ See 7 U.S.C. s. 2009cc and 15 U.S.C. s. 681.

²⁴ "Relief contribution" means a cash investment in a relief fund which equals the amount specified on a notice of tax credit allocation issued by the DEO after certification. The investments must purchase an equity interest in the relief fund or a debt instrument issued by the relief fund.

The DEO must issue a written notice to an approved applicant certifying the applicant as a relief fund and specifying the applicant's amount of relief investment authority. If the DEO denies an application for any reason other than the aforementioned reasons, the DEO must notify the applicant and allow the applicant to cure defects in the application within 15 days of receipt of the notice of denial.

The DEO may not reduce a relief fund's requested relief investment authority unless such an allocation would cause the DEO to exceed the relief investment authority and relief contribution limits. If the DEO approves applications received on the same day with relief investment authority and relief contribution amounts that would collectively exceed the limits specified by the bill, the DEO must approve both applicants but proportionally reduce the authority and contribution for each approved application as necessary to avoid exceeding the limit.

Additionally, the DEO may not approve any applications submitted after a denied application until the previously denied application has been cured and reconsidered if the approval of the subsequent application would result in exceeding the dollar limitations on relief investment authority or relief contributions.

Within 30 days after certification, a relief fund must collect the relief contributions from each investor whose affidavit was included in the application, and collect direct or indirect equity investments from affiliates of the fund equal to at least 10 percent of the relief fund's investment authority. A relief fund must send to the DEO proof of collecting such contributions and investments within 35 days of certification. If a relief fund fails to send such documentation, the DEO must revoke the fund's certification.

Upon a relief fund's satisfaction of the aforementioned collection and documentation requirements, the DEO must issue a notice of the amount and utilization schedule of the tax credit certificates allocated to each investor or affiliate as a result of their relief contributions. Only the first \$3.5 million of a relief fund's investment in any one impact business may be considered a relief investment; a relief investment in an affiliate of an impact business is considered a relief investment in that impact business.

Tax Credits

An investor that made a relief contribution is issued a nonrefundable tax credit certificate against the insurance premium tax under s. 624.509, F.S., and the retaliatory tax under s. 624.5091, F.S., which is transferable to any person that pays premium taxes in the state.

On the closing date,²⁵ a taxpayer that made a relief contribution is eligible for a tax credit equal to the amount specified in the notice sent by the DEO. The DEO will issue investors a tax credit certificate for one-fifth of the relief contributions on the anniversary of the relief fund's closing date every year for 5 years, beginning in 2023. If the tax credit received in one year exceeds the taxes owed for that year, the unused credits may be carried forward indefinitely; a retaliatory tax

²⁵ The closing date is the date on which a relief fund has collected the relief funds from each investor whose affidavit was included in the fund's application and the direct or indirect equity investments from affiliates of the relief fund.

may not be required for using the tax credit. Anyone receiving a tax credit must include a copy of the tax credit certificate when submitting an annual statement for each year the credit is claimed.

Revocation of Tax Credit Certificates and Exit from the Program

The DEO is not required to issue a tax credit to a relief fund that does not invest at least 70 percent of its relief investment authority in relief investments within 1 year of the closing date or 100 percent of its authority within 2 years of the closing date. A relief investment is any capital or equity investment²⁶ in or loan²⁷ to an impact business with a maturity of at least 2 years after the date of issuance.

The DEO may revoke a relief fund's tax credit certificate if the relief fund:

- Makes a distribution in excess of the cumulative investment earnings of the relief fund, taking into account all past distributions, before satisfying the investment level requirements listed above;
- Fails to maintain the required investment levels through the fifth anniversary of the closing date;²⁸ or
- Makes a distribution that results in the fund having less than 100 percent of its authority invested in other relief investments or held in cash or marketable securities available for relief investments, after satisfying the original investment level requirements but before decertification of the relief fund.

The DEO must notify a relief fund of the reasons for revocation before revoking the tax credit certificate, and the DEO may not revoke a certificate if a relief fund corrects the reasons for revocation within 30 days of receiving notice.

A relief fund that has invested all of its relief investment authority in relief investments may apply to the DEO to be decertified on or after the sixth anniversary of the fund's closing date. The DEO must respond and not unreasonably deny an application for decertification within 60 days of receipt; the fact that no tax credit certificates have been revoked with respect to the relief fund is evidence to prove that the relief fund is eligible for decertification. The DEO must send notice of its decision to approve or deny an application for decertification, including, if necessary, any reasons for denial.

The DEO may not revoke a tax credit certificate in response to any action a relief fund takes after decertification. However, a decertified relief fund's tax credit certificate may be revoked as a result of actions taken while a fund was certified, even if the actions are discovered after the fund has been decertified.

²⁶ An equity investment is a relief investment only if the relief fund does not acquire a majority interest in the small business as a result of the investment.

²⁷ A secured loan is a relief investment only if it has an initial interest rate of less than 2 percent or principal and interest payments deferred for at least 1 year. Subordinate loans must have an initial interest rate of 6 percent and interest payments deferred for at least 1 year.

²⁸ An investment that is sold or repaid is considered to be maintained if the relief fund reinvests an amount equal to the repaid or sold investment into other relief investments in Florida within 1 year of receipt of such funds.

The relief investment authority and relief contributions of a relief fund whose tax credit certificate has been revoked do not count towards the \$100 million limit and \$80 million limit on relief investment authorities and relief contributions, respectively, that the DEO is authorized to approve. Relief investment authority and relief contribution amounts from such a fund will be awarded pro rata to relief funds whose investment relief authorities were reduced in order to not exceed the total relief investment authority the DEO may approve. Relief investment authority remaining may be awarded to new applicants.

Reporting Requirements

Each relief fund must submit a report to the DEO on or before April 1 of each year, including the closing date year, until the calendar year after the relief fund is decertified. In addition to an itemization of the relief fund's investments, reports must also include:

- A bank statement evidencing each relief investment;
- The name, location, and industry class of each impact business that received a relief investment and evidence that the business qualified as an impact business at the time of the investment;
- The jobs created and retained as a result of each relief investment; and
- Any other information required by the DEO.

Relief funds must also submit a report to the DEO on or before the fifth business day after the first and second anniversaries of the closing date that provides documentation proving that the relief fund has met the investment thresholds required and has not violated any other revocation provisions.

Miscellaneous

A relief fund may request the DEO to issue a written opinion advising whether a business qualifies as an impact business; if the DEO does not respond within 10 days, the business is deemed an impact business or small business.

The bill grants the DEO rulemaking authority to implement the program.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties and municipalities to spend funds, limit their ability to raise revenue, or reduce the percentage of a state tax shared with them. Therefore, the mandates provisions of Art. VII, s. 18 of the State Constitution do not apply.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

The bill does not create or raise state taxes or fees. Therefore, the requirements of Art. VII, s. 19 of the State Constitution do not apply.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference determined that the bill will reduce General Revenue Fund receipts by \$16 million beginning in Fiscal Year 2023-2024, and by \$16 million each fiscal year thereafter.²⁹

B. Private Sector Impact:

Businesses that qualify as impact businesses under the bill could obtain equity or debt financing under the act. The bill provides investment opportunities for rural business investment companies and small business investment companies. Insurers may reduce their insurance premium tax or retaliatory tax liability by making relief contributions or using credits transferred to them by investors or affiliates.

C. Government Sector Impact:

The DEO may incur administrative costs to implement and operate the program.

The DOR estimates it requires a \$50,116 appropriation in Fiscal Year 2023-2024 to implement the bill.³⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

- The DOR noted the following issues:³¹

²⁹ Office of Economic and Demographic Research, The Florida Legislature, *SB 1444 & HB 1161* (March 19, 2021), available at http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2021/_pdf/page211-213.pdf (last visited March 25, 2021). See 212 for assumptions for this estimate.

³⁰ Florida Dep't of Revenue, *Senate Bill 1444 Analysis* (March 15, 2021) (on file with the Senate Committee on Finance and Tax).

³¹ *Id.*

- The bill does not require the DEO to notify the DOR of the name of each entity that is “allocated” tax credits, and the amount of the tax credits allocated. It does not require the DEO to notify the DOR when credits are subsequently revoked or lapsed.
 - The DOR will need the name of the entity certified to claim the credit, the amount of the credit certified, federal identification number (FEIN) and the closing date in order to process the credit correctly and ensure the proper entity receives the credit. Since the credits may be transferred from investors and affiliates to insurers and the carryover of unused credits is indefinite, this information is needed to verify credits. The sponsor may wish to consider having the transfer take place prior to the issuance of the tax credit certificates.
 - “Premium taxes” is defined on lines 84 and 85 as any insurance premium tax liability or any retaliatory tax liability. It is unclear if a taxpayer must choose between the two, whether the tax credit certificates will distinguish which tax they are available for, or whether a taxpayer can break the credit up and annually split its credit amount between both taxes. It may be easier for a taxpayer to make an election when applying for the credit so DEO can indicate on the certificate the tax to which the certificate is applicable.
 - It is not clear if a taxpayer is eligible for the entire eligible credit amount in the initial year or one-fifth of the credit amount. See lines 231 through 238.
- Lines 231-232 provide that “a taxpayer that made a relief contribution” is eligible for the credit equal to the amount specified in the DEO notice, and lines 233-237 require the DEO to issue certificates for 5 years equal to one-fifth of the relief contributions allocated to the taxpayer. It appears that a taxpayer that did not make a relief contribution but was transferred the credit by an investor or affiliate is not subject to this provision and may use the entire credit amount in the initial year, but the sponsor may wish to specify.

VIII. Statutes Affected:

This bill creates section 288.715 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.