



PROACTIVE RELEASE COVERSHEET

Minister	Hon Chris Bishop Hon Todd McClay Hon Andrew Hoggard	Portfolio	Minister Responsible for RMA Reform Minister of Agriculture Associate Minister of Agriculture
Name of package	Restricting notification of freshwater plans ahead of the NPS-FM replacement	Date to be published	1 April 2026

List of documents that have been proactively released

Date	Title	Author
21 October 2024	Cabinet paper: Restricting notification of freshwater plans ahead of the NPS-FM replacement	Ministry for the Environment and Ministry for Primary Industries
21 October 2024	Cabinet Minute of Decision (CAB-24-MIN-0408)	Cabinet Office
17 October 2024	Short form supplementary disclosure statement	Ministry for the Environment

Information redacted **YES**

Any information redacted in this document is redacted in accordance with the Ministry for the Environment's policy on proactive release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Summary of reasons for redaction

Some information has been withheld from *Restricting notification of freshwater plans ahead of the NPS-FM replacement* under Section 9(2)(h) of the Official Information Act to protect matters subject to legal privilege.

Some information has been withheld from the Cabinet Expenditure and Regulatory Review Committee Minute of Decision under Section 9(2)(h) of the Official Information Act to protect matters subject to legal privilege.

In-Confidence

Office of the Minister Responsible for RMA Reform

Office of the Minister of Agriculture

Restricting notification of freshwater plans ahead of the NPS-FM replacement

Proposal

1. This paper seeks agreement to amend the Resource Management Act 1991 (RMA) through the Resource Management (Freshwater and Other Matters) Amendment Bill (the Bill) to restrict councils' ability to notify freshwater plans ahead of the replacement of the National Policy Statement for Freshwater Management (NPS-FM).

Relation to government priorities

2. The proposals in this paper deliver on, or support, Coalition Agreement commitments to:
 - 2.1. seek advice on how to exempt councils from obligations under the NPS-FM (Coalition Agreement National Party/ACT New Zealand)
 - 2.2. make it easier to consent new infrastructure including renewable energy, allow farmers to farm, get more houses built, and enhance primary sector including, forestry, pastoral, horticulture and mining (Coalition Agreement National Party/ACT New Zealand and Coalition Agreement National/New Zealand First).
3. The Government has also agreed that the resource management reform work programme will be guided by the following objectives [ECO-24-MIN-0022]:
 - 3.1. making it easier to get things done by:
 - 3.1.1. unlocking development capacity for housing and business growth
 - 3.1.2. enabling delivery of high-quality infrastructure for the future, including doubling renewable energy
 - 3.1.3. enabling primary sector growth and development (including aquaculture, forestry, pastoral, horticulture, and mining)
 - 3.2. while also:
 - 3.2.1. safeguarding the environment and human health
 - 3.2.2. adapting to the effects of climate change and reducing the risks from natural hazards
 - 3.2.3. improving regulatory quality in the resource management system
 - 3.2.4. upholding Treaty of Waitangi settlements and other related arrangements.

Executive Summary

4. The Government is committed to reviewing and replacing the NPS-FM in this term and anticipates a new NPS-FM will be gazetted, along with wider national direction changes, in mid-2025.

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5. Several regional councils are intending to notify freshwater plans¹ ahead of the replacement of the NPS-FM. This is not an efficient use of resources and risks duplication of work, uncertainty for resource users, ratepayers, and the primary sector.
6. To address this, we recommend an amendment to the RMA that restricts councils' ability to notify freshwater plans prior to the gazettal of the replacement NPS-FM in 2025.
7. We also recommend a process for councils to seek an exemption to this restriction if specific criteria are met. This will help to avoid the amendment hindering some beneficial planning matters (e.g., plans associated with housing or infrastructure).
8. We are seeking authorisation to table this amendment as an Amendment Paper to the Bill during Committee of the Whole House.

Background

9. The Government has announced it will review and replace the National Policy Statement of Freshwater Management (NPS-FM), along with a suite of national direction changes, anticipated to be gazetted mid-2025.
10. The NPS-FM is implemented through council freshwater plans. Freshwater plans are plans and policy statements defined in the RMA that give effect to NPS-FM and must progress through the Freshwater Planning Process, which is also set out in the RMA.
11. The RMA previously required all councils to notify freshwater plans by 31 December 2024. To provide sufficient time for councils to incorporate the replacement NPS-FM the Government amended the December 2024 deadline to December 2027². Since this announcement several councils have indicated they intend to progress to notification before the review and replacement of NPS-FM.³

Analysis

Issues

12. Notification of a freshwater plan starts a statutory planning process after which objectives and policies in plans are given 'weight' in consenting decisions and air, water and soil rules have immediate legal effect. Notification of a freshwater plan also triggers: public submissions; appointment of freshwater commissioners; begins a statutory timeframe; and requires any variations of the plan to follow processes set out in the RMA.
13. It is inefficient for councils to progress to notification of freshwater plans before the review and replacement of NPS-FM, as they will have to amend plans once the new NPS-FM is gazetted. If councils notify freshwater plans giving effect to the existing NPS-FM this risks duplication of work and uncertainty for resource users, ratepayers and the primary sector, when the new NPS-FM is made public.

¹ Throughout this paper the term 'freshwater plan' is used to describe any plan or policy statement that meets the definition of a freshwater planning instrument in s80A of the Resource Management Act 1991.

² Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Act.

³ Otago Regional Council and Environment Canterbury intend to notify plans or policy statements ahead of NPS-FM review. Taranaki Regional Council is considering notification in mid-2025.

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14. Some councils have chosen to delay freshwater plans to await the NPS-FM replacement, but some have not, and Government intervention is required to restrict their ability to notify new plans and avoid this potential duplication and confusion.

Proposed amendment to restrict councils' ability to notify freshwater plans ahead of NPS-FM replacement

15. We recommend an amendment to the RMA that restricts councils' ability to notify freshwater plans or policy statements that give effect to NPS-FM prior to the gazettal of the replacement NPS-FM in 2025. This will provide certainty to councils, and more importantly resource users and ratepayers, that any notified plan will be aligned with the replaced NPS-FM and will not be quickly superseded.
16. Any councils intending to notify a plan that gives effect to the NPS-FM ahead of its replacement will need to pause that process and await the new NPS-FM.

Most RMA plans will not be impacted by this amendment

17. We recommend this amendment only apply to freshwater plans that have not been notified before the date of royal assent of the Bill. This means for example Greater Wellington's regional policy statement (now in appeal stage) and regional plan, both notified in 2023, will progress without impact.
18. This amendment will have no impact on operative regional plans or council resource consenting functions; councils can continue to process resource consents under existing operative plans.
19. Any plan or policy statement that does not meet the definition of a freshwater planning instrument as defined in s80A of the RMA will not be impacted, this includes all district plans.

Exemption to the notification restriction by Ministerial agreement

20. In some limited circumstances there might be freshwater plans (or parts of a plan) where the benefits of progressing it out-weigh the risks noted above, for example Environment Canterbury (ECAN) are looking to progress a freshwater plan amendment to rules that currently prevent infrastructure projects from intercepting groundwater.⁴
21. To avoid the restriction on notification preventing or slowing otherwise beneficial plan changes we recommend the amendment include an exemption regime where a freshwater plan can be progressed if agreed by the Minister for the Environment.
22. We recommend councils may seek an exemption if the plan provisions are:
- 22.1. required to progress flood protection or remediation or to prevent or mitigate natural hazard risk; or
 - 22.2. required to address unintended consequences, unforeseen implications, or unworkable or inefficient plan provisions; or
 - 22.3. required to address changes to national direction or the RMA [from Royal Assent of the Bill until the restriction ceases]; or

⁴ Environment Canterbury's Land and Water Regional Plan (LWRP) draft Change 8.

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- 22.4. relates to the provision, operation or maintenance of regionally or nationally significant infrastructure, including large hydroelectric power schemes; or
 - 22.5. required for the provision, operation or maintenance of municipal drinking water, stormwater or wastewater; or
 - 22.6. required to progress housing development; or
 - 22.7. required to give effect to Treaty Settlement Obligations; or
 - 22.8. required for any other reason the Minister deems appropriate.
23. Councils will be required to seek an exemption by providing the Minister for the Environment the plan they intend to notify, not early consultation versions. Councils will be required to set out how the plan meets one or more of the criteria when seeking an exemption.
24. The Minister for the Environment will not be required to grant an exemption but may do so if a freshwater plan meets any of the above criteria.
25. The above criteria should allow plans like the ECAN's groundwater interception example above to progress, while restricting the same council's ability to progress their draft Regional Policy Statement, which is a much wider ranging policy document incorporating core NPS-FM 2020 matters.
26. Some councils may view the requirement to seek an exemption as too onerous and the risk they put effort into a draft plan only for the Minister to decline as too high. This may mean some plans the Government would prefer are progressed are stopped.
27. Councils would also be able to progress plan changes through the standard RMA Schedule 1 process, provided the plan change is not to give effect to the NPS-FM 2020 (ie, the plan is not a freshwater planning instrument).

There are risks and implications in progressing this amendment

28. Regional councils are required by the RMA to establish and implement objectives, policies and methods to achieve integrated management of natural and physical resources and control the use of land, the taking of water and the discharge of contaminants to water. This amendment is a significant intervention in a core regional government function and introduces uncertainty in how they carry out their statutory duties.
29. For councils who have already undertaken pre-notification steps to develop a freshwater plan (Otago and Canterbury) this amendment may introduce additional process costs and require community consultation to be undertaken again.
30. There is a risk that the amendment could slow down or prevent council progress on other Government priorities (eg, housing, infrastructure). The exemption regime above, and the restriction being in place for only a short period, should lessen this risk but may not prevent it entirely.
31. On balance we recommend this amendment is progressed to address the inefficiency and uncertainty for resource users, ratepayers and the primary sector associated with freshwater plan notification ahead of NPS-FM replacement. The risks can be adequately mitigated by keeping the restriction short in duration and providing an exemption regime in some circumstances.

How long the amendment will apply for

32. We are planning to replace the current NPS-FM in 2025. If for any reason the replacement to NPS-FM was significantly delayed this could risk councils' being unable to notify plans for a longer period, which may have significant consequences. To mitigate this, we recommend the amendment cease either:

32.1. when the next update to the NPS-FM is gazetted; or

32.2. 31 December 2025, whichever is sooner.

33. This provides sufficient time to review and replace the NPS-FM, but with a safety net to prevent councils being restricted from notifying plans indefinitely.

Risks of unintended consequences due to an expedited amendment without wide scrutiny

34. There has not been time to consult on this amendment outside of government, nor will the amendment be considered by a Select Committee. Due to the lack of scrutiny applied to the policy proposal there is a risk of unintended consequences.

Implications for Treaty Settlements and Crown Māori relations

35. The Crown acknowledges that Māori have rights and interests in water and geothermal resources, and changes to freshwater policy are of significant interest to Māori. Progressing these changes without consultation or engagement with iwi/Māori may further strain Crown Māori relations on freshwater matters.

36. There has been no treaty impact analysis undertaken for this change, and there is a possibility that restricting freshwater plan notification may hinder councils' ability to carry out obligations required by treaty settlements. The exemption above to allow plan changes required to give effect to treaty settlement provisions should mitigate this.

Legal implications – Legally Privileged

s 9(2)(h) [Redacted text block]

s 9(2)(h) [Redacted text block]

Cost-of-living Implications

39. There are no cost-of-living implications associated with the proposals in this paper.

Financial Implications

40. There are no direct financial implications to the Crown associated with the proposals in this paper.

Legislative Implications

41. We propose that amendments be made via an Amendment Paper to the Resource Management (Freshwater and Other Matters) Amendment Bill. The Office of the Clerk has provided provisional advice that this amendment would likely be within the scope of the Bill, though has yet to see the drafting for the amendment.

42. On 15 October 2024 the Attorney-General granted approval to instruct the Parliamentary Counsel Office to begin drafting this amendment ahead of Cabinet approval.

43. We also seek delegation from Cabinet to make further policy and drafting decisions, including tabling any further amendment papers, that are consistent with the decisions made in this paper.

44. The proposed Bill will bind the Crown.

Impact Analysis

Regulatory Impact Statement

45. Cabinet's impact analysis requirements apply to the proposals in this paper, but there is no accompanying Regulatory Impact Statement, and the Ministry for Regulation has not exempted the proposal from the impact analysis requirements. Therefore, it does not meet Cabinet's requirements for regulatory proposals.

Climate Implications of Policy Assessment

46. The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this policy proposal, as the threshold for significance is not met.

Population Implications

47. No population implications have been identified for any specific population groups.

Human Rights

48. No policy implications have been identified relating to the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993.

Use of external Resources

49. No external resources have been used as part of this policy process.

Consultation

50. The following agencies were informed of the contents of this paper, the Ministry for Primary Industries, and the Crown Law Office.

Communications

51. We intend to make a public statement on this amendment as soon as the relevant amendment paper is tabled in the House.

Proactive Release

52. We intend to proactively release this Cabinet paper and associated Minutes within 30 business days of final decisions being confirmed by Cabinet, subject to redaction as appropriate under the Official Information Act 1982.

Recommendations

The Minister Responsible for RMA Reform and Minister of Agriculture recommend that Cabinet:

1. **note** the government is committed to reviewing and replacing the NPS-FM in this term and this had been widely signalled
2. **note** several councils intend to notify freshwater plans ahead of the review and replacement of the NPS-FM
3. **note** that councils notifying freshwater plans ahead of the review and replacement of NPS-FM is inefficient and may lead to duplication and confusion for resource users, ratepayers and the primary sector.
4. **agree** to progress an amendment to the Resource Management Act 1991 (RMA) that would prevent the notification of any freshwater plan or policy statement prior to the gazettal of the replacement NPS-FM or 31 December 2025, whichever is sooner.
5. **agree** certain freshwater plan or policy changes can be exempted from the above restriction if expressly agreed by the Minister for the Environment.
6. **agree** the criteria the Minister for the Environment will apply when considering an exemption are if the plan or policy is:
 - 6.1. required to progress flood protection or remediation or to prevent or mitigate natural hazard risk; or
 - 6.2. required to address unintended consequences, unforeseen implications, or unworkable or inefficient plan provisions; or
 - 6.3. required to address changes to national direction or the RMA [from Royal Assent of the Bill until the restriction ceases]
 - 6.4. relates to the provision, operation or maintenance of regionally or nationally significant infrastructure, including large hydroelectric power schemes; or
 - 6.5. required for the provision, operation or maintenance of municipal drinking water, stormwater or wastewater; or

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- 6.6. required to progress housing development; or
- 6.7. required to give effect to Treaty Settlement obligations; or
- 6.8. required for any other reason the Minister deems appropriate.
- 7. **note** this is a significant intervention in a core regional government function and introduces uncertainty in councils' ability to carry out their statutory duties under the RMA
- 8. **note** this amendment may introduce additional costs on some councils where they have to change timeframes or undertake new consultation process
- 9. **note** this amendment could slow down or prevent council progress on other government priorities (eg, housing, infrastructure), however the exemption regime above should lessen this risk
- 10. **note** this amendment has not been consulted on or tested with any parties outside central government and could have unintended consequences
- 11. **note** progressing this amendment without consultation or engagement with iwi/Māori may further strain Crown Māori relations on freshwater matters
- 12. s 9(2)(h)
[REDACTED]
- 13. **agree** to introduce the proposed changes to the Resource Management (Freshwater and Other Matters) Amendment Bill via an Amendment Paper to the Committee of the Whole House
- 14. **authorise** the Minister Responsible for RMA Reform and the Minister of Agriculture to make further policy and drafting decisions, including tabling any further amendment papers, that are consistent with the decisions made in this paper
- 15. **note** the Attorney General has approved the Parliamentary Counsel Office to begin drafting on this amendment prior to Cabinet decisions

Regulatory Impact Statement

- 16. **note** the proposals in this paper do not meet regulatory impact assessment requirements

Communication

- 17. **note** that we intend to announce decisions on this matter as soon as possible after the amendment is tabled in the House.

Authorised for lodgement

Hon Chris Bishop

Minister Responsible for RMA Reform

Hon Todd McClay

Minister of Agriculture



Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Restricting Notification of Freshwater Plans Ahead of the NPS-FM Replacement

Portfolios **RMA Reform / Agriculture**

On 21 October 2024, Cabinet:

- 1 **noted** that the Government is committed to reviewing and replacing the National Policy Statement for Freshwater Management (NPS-FM) in the current parliamentary term, and that this had been widely signalled;
- 2 **noted** that several councils intend to notify freshwater plans ahead of the review and replacement of the NPS-FM;
- 3 **noted** that councils notifying freshwater plans ahead of the review and replacement of the NPS-FM is inefficient, and may lead to duplication and confusion for resource users, ratepayers and the primary sector;
- 4 **agreed** to progress an amendment to the Resource Management Act 1991 (RMA) that would prevent the notification of any freshwater plan or policy statement prior to the gazettal of the replacement NPS-FM or 31 December 2025, whichever is sooner;
- 5 **agreed** that certain freshwater plan or policy changes can be exempted from the above restriction if expressly agreed by the Minister for the Environment;
- 6 **agreed** that the criteria the Minister for the Environment will apply when considering an exemption are if the plan or policy is:
 - 6.1 required to progress flood protection or remediation, or to prevent or mitigate natural hazard risk; or
 - 6.2 required to address unintended consequences, unforeseen implications, or unworkable or inefficient plan provisions; or
 - 6.3 required to address changes to national direction or the RMA (from Royal Assent of the Bill until the restriction ceases); or
 - 6.4 relates to the provision, operation or maintenance of regionally or nationally significant infrastructure, including large hydroelectric power schemes; or
 - 6.5 required for the provision, operation or maintenance of municipal drinking water, stormwater or wastewater; or

- 6.6 required to progress housing development; or
- 6.7 required to give effect to Treaty settlement obligations; or
- 6.8 required for any other reason the Minister deems appropriate;
- 7 **agreed** that the amendment to the RMA to restrict the notification of any freshwater plan or policy statement can apply retrospectively, and will apply from Tuesday, 22 October 2024;
- 8 **noted** that this change will ensure that no councils can rush processes to take advantage of the small gap between the change being publicly available and the law commencing;
- 9 **noted** that the Resource Management (Freshwater and Other Matters) Amendment Bill is expected to receive Royal Assent on 24 October 2024, and therefore this change will have retrospective effect for only a short period;
- 10 **noted** that this amendment is a significant intervention in a core regional government function, and introduces uncertainty in councils' abilities to carry out their statutory duties under the RMA;
- 11 **noted** that this amendment may introduce additional costs on some councils where they have to change timeframes or undertake new consultation process;
- 12 **noted** that this amendment could slow down or prevent council progress on other government priorities (eg, housing and infrastructure), however the exemption regime above should lessen this risk;
- 13 **noted** that this amendment has not been consulted on or tested with any parties outside central government, and could have unintended consequences;
- 14 **noted** that progressing this amendment without consultation or engagement with iwi/Māori may further strain Crown - Māori relations on freshwater matters;
- 15 s 9(2)(h) [REDACTED]

Legislative implications

- 16 **agreed** to introduce the changes outlined in paragraphs 4-6 above to the Resource Management (Freshwater and Other Matters) Amendment Bill via an Amendment Paper to the Committee of the Whole House;
- 17 **authorised** the Minister Responsible for RMA Reform and the Minister of Agriculture to make further policy and drafting decisions, including tabling any further Amendment Papers, that are consistent with Cabinet's decisions relating to the paper under CAB-24-SUB-0408;
- 18 **noted** that the Attorney-General has authorised the Parliamentary Counsel Office to begin drafting this amendment prior to Cabinet decisions;

Regulatory Impact Statement

- 19 **noted** that the proposals in the paper under CAB-24-SUB-0408 do not meet Cabinet's regulatory impact assessment requirements;

Communication

20 **noted** that the Minister Responsible for RMA Reform and the Minister of Agriculture intends to announce the above decisions as soon as possible after the Amendment Paper is tabled in the House.

Rachel Hayward
Secretary of the Cabinet

Short-Form Supplementary Departmental Disclosure Statement

Resource Management (Freshwater and Other Matters) Amendment Bill

A short form supplementary disclosure statement for proposed government amendments to a Bill seeks to bring together in one place some selected information to support and enhance the Parliamentary and public scrutiny of those proposed amendments.

It highlights certain significant powers or features in the proposed amendments that might be of particular Parliamentary or public interest and warrant an explanation.

It provides a limited supplement to the original disclosure statement for the Resource Management (Freshwater and Other Matters) Amendment Bill, dated 14 May 2024 which can be found at this link:

<http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2024&no=47>

This supplementary disclosure statement was prepared by the Ministry for the Environment.

The Ministry for the Environment certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

17/10/2024

Significant Legislative Features

Offences, penalties and court jurisdictions

1. Do the proposed amendments create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalties)?	NO
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO

1.1. Was the Ministry of Justice consulted about these provisions?	NO

Privacy issues

2. Do the proposed amendments create, amend, or remove any provisions relating to the collection storage, access to, correction of, use or disclosure of personal information?	NO

Compulsory acquisition of private property

3. Do the proposed amendments contain any provisions that could result in the compulsory acquisition of private property?	NO

Charges in the nature of a tax

4. Do the proposed amendments create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO

Retrospective effect

5. Do the proposed amendments affect rights, freedoms, or impose obligations, retrospectively?	Yes
The proposed amendment restricts all regional councils' ability to notify freshwater planning instruments from 22 October 2024. The Resource Management (Freshwater and Other Matters) Amendment Bill is expected to receive Royal Assent on 25 October 2024 so this change does have retrospective effect.	

Strict liability or reversal of the burden of proof for offences

6. Do the proposed amendments:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for any offence or civil pecuniary penalty proceeding?	NO

6. Do the proposed amendments:	

Civil or criminal immunity

7. Do the proposed amendments create or amend a civil or criminal immunity for any person?	NO

Significant decision-making powers

8. Do the proposed amendments create or amend a decision-making power to make a determination about a person’s rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO

Powers to make delegated legislation

9. Do the proposed amendments create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	YES
<p>The amendment restricts Regional Councils’ ability to notify freshwater plans prior to the notification of a replacement National Policy Statement for Freshwater Management.</p> <p>Alongside this, the amendment creates an exemption regime, where certain freshwater plans can be exempted from the restriction created by the amendment at the discretion of the Minister for the Environment, with the following associated decision making criteria:</p> <p>if the plan or policy is:</p> <ul style="list-style-type: none"> • required to progress flood protection or remediation or to prevent or mitigate natural hazard risk; or • required to address unintended consequences, unforeseen implications, or unworkable or inefficient plan provisions; or • required to address changes to national direction or the RMA [from Royal Assent of the Bill until the restriction ceases] • relates to the provision, operation or maintenance of regionally or nationally significant infrastructure, including large hydroelectric power schemes; or • required for the provision, operation or maintenance of municipal drinking water, stormwater or wastewater; or • required to progress housing development; or • required to give effect to Treaty Settlement obligations; or • required for any other reason the Minister deems appropriate. 	

10. Do the proposed amendments create or amend any other powers to make delegated legislation?	NO
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Any other unusual provisions or features

11. Do the proposed amendments contain any provisions (other than those noted above) that are unusual or call for special comment?	NO