

“FACILITATING BUSINESS RAPID RESPONSE TO STATE DECLARED DISASTER ACT of 2012”

[MODEL LANGUAGE]

An Act to amend the public services law, state law and tax law, in relation to thresholds for establishing presence, residency or doing business in the state for out-of-state employees and companies including affiliates of in-state companies that temporarily provide resources and personnel in the state during a state of emergency declared by either the Governor or the President of the United States.

SECTION 1. SHORT TITLE.

This Act may be cited as the “Facilitating Business Rapid Response to State Declared Disasters Act of 2012”.

SECTION 2. FINDINGS. The Legislature finds that –

- A. During times of storm, flood, fire, earthquake, hurricane or other disaster or emergency, many companies bring in resources and personnel from other states throughout the U.S. on a temporary basis to expedite the often enormous and overwhelming task of cleaning up, restoring and repairing damaged buildings, equipment and property or even deploying or building new replacement facilities in the state.
- B. This may involve the need for out-of-state companies, including out-of-state affiliates of companies based in the state to bring in resources, property and/or personnel that previously have had no connection to the state, to perform activity in the state including but not limited to repairing, renovating, installing, building, rendering services or other business activities and for which personnel may be located in the state for extended periods of time to perform such activities.
- C. During such time of operating in the state on a temporary basis solely for purposes of helping the state recover from the disaster or emergency, these companies and individual employees should not be burdened by any requirements for business and employee taxes as a result of such activities in the state for a temporary period.
- D. The state’s nexus and residency thresholds are intended for businesses and individuals in the state as part of the conduct of regular business operations or who intend to reside in the state and should not be directed at companies and individuals coming into the state on a temporary basis to provide help and assistance in response to a declared state disaster or emergency.
- E. To ensure that companies may focus on quick response to the needs of the state and its citizens during a declared state disaster or emergency it is appropriate for the legislature to deem that such activity for a reasonable period of time during and after the disaster or emergency for

repairing and restoration of the often devastating damage to property and infrastructure in the state shall not establish presence, residency, nor doing business in the state nor any other criteria for purposes of state and local taxes, licensing and regulatory requirements.

SECTION 3. DEFINITIONS. For purposes of this Act, the following terms shall have the following meanings:

“Registered Business in the State” (or “Registered Business”) means a business entity that is currently registered to do business in the state prior to the declared state disaster or emergency.

“Out-of-State Business” means for purposes of this legislation a business entity that has no presence in the state and conducts no business in the state whose services are requested by a Registered Business or by a state or local government for purposes of performing Disaster or Emergency Related Work in the state. This shall also include a business entity that is affiliated with the Registered Business in the State solely through common ownership. The “Out-of-State Business” has no registrations or tax filings or nexus in the state prior to the declared state disaster or emergency.

“Out-of-State Employee” means for purposes of this legislation an employee of an Out-of-State business who does not work in the state. “Disaster or Emergency Related Work” means repairing, renovating, installing, building, rendering services or other business activities that relate to infrastructure that has been damaged impaired or destroyed by the Declared State Disaster or Emergency.

“Infrastructure” means for purposes of this legislation property and equipment owned or used by communications networks, gas and electric distribution systems, water pipelines, and public roads and bridges and related support facilities that services multiple customers or citizens including but not limited to real and personal property such as buildings, offices, lines, poles, pipes, structures and equipment.

“Declared State Disaster or Emergency” means a disaster or emergency event for which a Governor's State of Emergency Proclamation has been issued or for which a Presidential Declaration of a Federal Major Disaster or Emergency has been issued.

“Disaster Period” means a period that begins within ten days of the first day of the Governor’s Proclamation or the President’s Declaration (whichever occurs first) and that extends for a period of sixty calendar days after the end of the declared disaster or emergency period.

SECTION 4. OBLIGATIONS AFTER DISASTER PERIOD.

A. BUSINESS AND EMPLOYEE STATUS DURING DISASTER PERIOD.

1. An Out-of-State Business that conducts operations within the state for purposes of performing work or services related to a Declared State Disaster or Emergency during the Disaster Period

shall not be considered to have established a level of presence that would require that business to register, file and remit state or local taxes or that would require that business or its out of state employees to be subject to any state licensing or registration requirements. This includes any and all state or local business licensing or registration requirements or state and local taxes or fees such as unemployment insurance, state or local occupational licensing fees and sales and use tax on equipment used or consumed during the disaster period, public service commission or secretary of state licensing and regulatory requirements. For purposes of any state or local tax on or measured by, in whole or in part, net or gross income or receipts, all activity of the Out-of-State Business that is conducted in this state pursuant to this Act shall be disregarded with respect to any filing requirements for such tax including the filing required for a unitary or combined group for which the Out-of-State Business may be a part.

2. Any Out-of-State Employee as defined herein shall not be considered to have established residency or a presence in the state that would require that person or that person's employer to file and pay income taxes or to be subjected to income tax withholdings or to file and pay any other state or local tax or fee during the Disaster Period. This includes any related state or local employer withholding and remittance obligations.

B. TRANSACTION TAXES AND FEES. Out-of-State Businesses and Out-of-State Employees shall be required to pay transaction taxes and fees including but not limited to fuel taxes or sales/use taxes on materials or services subject to sales/use tax, hotel taxes, car rental taxes or fees that the Out-of-State Affiliated Business or Out-of-State employee purchases for use or consumption in the state during the Disaster Period, unless such taxes are otherwise exempted during a Disaster Period.

C. BUSINESS OR EMPLOYEE ACTIVITY AFTER DISASTER PERIOD. Any Out-of-State Business or Out-of-State employee that remains in the state after the Disaster Period will become subject to the state's normal standards for establishing presence, residency or doing business in the state and will therefore become responsible for any business or employee tax requirements that ensue.

SECTION 5. ADMINISTRATION.

A. NOTIFICATION OF OUT-OF-STATE BUSINESS DURING DISASTER PERIOD.

1. The Out-of-State Business that enters the state shall, upon request, provide to the [Designated State Agency] a statement that it is in the state for purposes of responding to the disaster or emergency, which statement shall include the business' name, state of domicile, principal business address, federal tax identification number, date of entry, and contact information.

2. A Registered Business in the State shall, upon request, provide the information required in paragraph 1 of this section for any affiliate that enters the state that is an Out-of-State Business. The notification shall also include contact information for the Registered Business in the State.

B. NOTIFICATION OF INTENT TO REMAIN IN STATE. An Out-of-State Business or an employee that remains in the state after the Disaster Period shall complete state and local registration, licensing and filing requirements that ensue as a result of establishing the requisite business presence or residency in the state applicable under the existing rules.

C. PROCEDURES. The [Designated Agency] shall promulgate necessary regulations, develop and issue forms or online processes to carry out these administrative procedures.

SECTION 6. EFFECTIVE DATE.

This Act shall be effective immediately.