

“Facilitating Business Rapid Response to State Declared Disaster Act”

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 businesses including affiliates of in-state businesses 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 2014”.

SECTION 2. FINDINGS. The Legislature finds that –

A. During times of storm, flood, fire, earthquake, hurricane or other disaster or emergency, many businesses 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 businesses, including out-of-state affiliates of businesses 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 businesses 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 businesses 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 businesses 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 before, during and after the disaster or emergency for repairing and restoration of the often devastating damage to critical property and infrastructure in the state as defined in this Act 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, except for Disaster or Emergency Related Work, 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 other than Disaster or Emergency Related Work during the tax year immediately preceding the Declared State Disaster or Emergency.

“Out-of-State Employee” means for purposes of this legislation an employee who does not work in the state, except for “Disaster or Emergency Related Work” during the “Disaster Response Period.”

“Critical Infrastructure” means for purposes of this legislation property and equipment owned or used by communications networks, electric generation, transmission and distribution systems, gas distribution systems, water pipelines 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 (a) for which a Governor’s State of Emergency Proclamation has been issued, (b) for which a Presidential Declaration of a Federal Major Disaster or Emergency has been issued, or (c) other disaster or emergency event within the state for which a good faith response effort is required, and for which another authorized official of the state is given notification from the Registered Business and such official designates such event as a disaster or emergency thereby invoking the provisions of this Act.

“Disaster Response Period” means a period that begins ten days prior to the first day of the Governor’s Proclamation, the President’s Declaration or designation by an other authorized official of the state (as set forth in this Act) (whichever occurs first) and that extends sixty calendar days after the-Declared State Disaster or Emergency, or any longer period authorized by the [Designated State Official or Agency].

“Disaster or Emergency Related Work” means repairing, renovating, installing, building, rendering services or other business activities that relate to Critical Infrastructure that has been damaged impaired or destroyed by the Declared State Disaster or Emergency.

SECTION 4. OBLIGATIONS AFTER DISASTER RESPONSE PERIOD.

A. BUSINESS AND EMPLOYEE STATUS DURING DISASTER RESPONSE 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 Response Period shall not be considered to have established a level of presence that would require that business to register, file and/or 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 including, but not limited to unemployment insurance, state or local occupational licensing fees and sales and use tax or ad valorem tax on equipment brought into the state temporarily (for use during the Disaster Response Period and subsequently removed from the state), 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 of which the Out-of-State Business may be a part. Also, for the purpose of apportioning income, revenue, or receipts the performance by an Out-of-State Business of any work in accordance with this Code section shall not be sourced to or shall not otherwise impact or increase the amount of income, revenue, or receipts apportioned to this state.

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 tax withholdings or to file and pay any other state or local tax or fee during the Disaster Response Period. This includes any related state or local employer withholding and remittance obligations, but does not include any transaction taxes or fees as described in subsection B.

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 consumed or used in the state 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 Response Period, unless such taxes are otherwise exempted during a Disaster Response Period.

C. BUSINESS OR EMPLOYEE ACTIVITY AFTER DISASTER RESPONSE PERIOD. Any Out-of-State Business or Out-of-State Employee that remains in the state after the Disaster Response 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 RESPONSE PERIOD.

1. The Out-of-State Business that enters the state shall, upon request, provide to the [Designated 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 Out-of-State Employee that remains in the state after the Disaster Response 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 or other Authorized State Official] shall promulgate necessary regulations, develop and issue forms or online processes, and maintain and make available an annual record of any designations pursuant to this Act to carry out these administrative procedures.

SECTION 6. EFFECTIVE DATE.

This Act shall be effective immediately.