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Sixty-fifth
Legislative Assembly
of North Dakota

FIRST ENGROSSMENT

ENGROSSED SENATE BILL NO. 2199

Introduced by

Senators Cook, Bekkedahl, Laffen

Representatives Dockter, Headland, Louser

A BILL for an Act to create and enact chapter 37-17.5 of the North Dakota Century Code, relating to facilitating entry of an out-of-state business to perform disaster or emergency remediation work in this state on critical natural gas, electrical, and telecommunication transmission infrastructure and to provide a limited exemption for that purpose from state and local taxes and fees, licensing, and other requirements during the time in this state employed in disaster or emergency remediation work.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 37-17.5 of the North Dakota Century Code is created and enacted as follows:

37-17.5-01. Definitions.

As used in this chapter:

1. "Critical infrastructure" means real and personal natural gas, electrical, and telecommunication transmission property so vital to the state that the incapacity or destruction of that natural gas, electrical transmission or distribution system, or telecommunications transmission system would have a debilitating impact on public health or safety and the economic and physical security of the state or region.
2. "Declared state disaster or emergency" means a disaster or emergency event for which a:
   a. Disaster or emergency has been declared by the governor; or
   b. Presidential declaration of a federal major disaster or emergency has been issued.
3. "Disaster or emergency remediation work" means repair or replacement of critical infrastructure that has been, or is under threat of being damaged, impaired, or destroyed by the declared state disaster or emergency.

4. "Disaster response period" means a period that begins ten days before, and ends sixty calendar days after, the declared state disaster or emergency and includes any extension of that time provided by executive order of the governor.
5. "Out-of-state business" means a business entity, including an out-of-state business affiliated solely through common ownership with a business registered in this state, which did not have a business presence in this state before the disaster remediation period and which is in this state to perform disaster or emergency remediation work at the request of a requesting entity.
6. "Out-of-state employee" means an employee who is not a North Dakota resident employed by an out-of-state business.
7. "Registered business" means a business entity registered to do business in this state before the declared state disaster or emergency.
8. "Requesting entity" means an officer or agency of this state, a political subdivision, or a business registered in this state.
9. "State agency" means job service North Dakota, the secretary of state, the tax commissioner, or workforce safety and insurance.

37-17.5-02. Business and employee status during and after disaster response period.

1. An out-of-state business that conducts operations within this state for purposes of performing disaster or emergency remediation work or services during the disaster response period may not be considered to have established a business presence that would require that business or its out-of-state employees to be subject to any state and local taxes or fees including unemployment insurance, workers' compensation, or taxes administered by the tax commissioner. The out-of-state business or out-of-state employee shall have a valid license to perform that business or occupation from the principal state of business or employment.
2. During the disaster response period, the out-of-state business or out-of-state employee may not be required to file or pay any state or local tax administered by a state agency. The out-of-state business or out-of-state employee may not be required to pay any sales and use tax on equipment used or brought into this state temporarily for use during the disaster response period if the equipment is removed from this state within a reasonable period of time after the disaster response period.

3. 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 conducted in this state under this chapter must be disregarded with respect to any filing requirements for a tax, including the income tax return required for a unitary or combined group of which the out-of-state business may be a part. For the purpose of apportioning income, the apportionment factors attributable to the performance by an out-of-state business of any work under this chapter may not be sourced to this state by the out-of-state business or any member of its affiliated group.

4. An out-of-state employee may not be considered to have established a presence in this state which would require that individual or that individual's employer to file or pay income taxes, be subject to income tax withholding, or file and pay any other state or local tax or fee during the disaster response period. This includes any tax or fee imposed by a state agency but does not include any transaction taxes or fees described in subsection 5.

5. Out-of-state businesses and out-of-state employees are subject to fuel taxes and state or local sales or use taxes on materials or services purchased, consumed, or used in this state which are subject to sales or use taxes, hotel taxes, or car rental taxes or fees which the out-of-state affiliated business or out-of-state employee purchases for use or consumption in this state during the disaster response period.

6. Any out-of-state business or out-of-state employee that remains in this state after the disaster response period is subject to any business or employee registration and tax requirements that apply.

7. An employee's sole remedy for a workplace injury under this section is the employee's out-of-state employer's workers compensation policy.

37-17.5-03. Notification by out-of-state business during and after disaster response period.

1. An out-of-state business that enters this state for disaster or emergency remediation work shall provide to the state agencies a statement that the business is in this state for the sole purpose of responding to the disaster or emergency. The statement must include the business name, out-of-state business name if applicable, state of domicile, principal business address, federal tax identification number, date of entry into this

1 state, and contact information, including the out-of-state business's tax matters
2 person. An out-of-state business shall provide proof that its workers have workers'
3 compensation insurance to workforce safety and insurance.
4 2. A registered business in this state shall provide the information required in
5 subsection 1 for any out-of-state affiliate that enters this state.
6 3. Each state agency may develop procedures and issue forms or online processes to
7 carry out these administrative procedures and maintain and make available a record of
8 any designations made by an out-of-state business or out-of-state employee pursuant
9 to this chapter.