

Introduced by

Senators Cook, Flakoll, Dotzenrod

Representatives Dockter, Headland, Silbernagel

1 A BILL for an Act to create and enact chapter 37-17.5 of the North Dakota Century Code,
2 relating to facilitating entry of an out-of-state business to perform disaster or emergency
3 remediation work in this state and to provide a limited exemption for that purpose from state and
4 local taxes and fees, licensing or registration requirements, and other requirements during the
5 time in this state employed in disaster or emergency remediation work; and to declare an
6 emergency.

7 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

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

10 **37-17.5-01. Definitions.**

11 As used in this chapter:

- 12 1. "Critical infrastructure" means real and personal property that constitutes an essential
13 component of a road or bridge; communications network; electric generation,
14 transmission, or distribution system; oil or gas storage, transmission, or distribution
15 system; or water storage, transmission, treatment, distribution, drainage, sewerage, or
16 flood protection system.
- 17 2. "Declared state disaster or emergency" means a disaster or emergency event for
18 which a:
- 19 a. Disaster or emergency has been declared by the governor; or
20 b. Presidential declaration of a federal major disaster or emergency has been
21 issued.
- 22 3. "Disaster or emergency remediation work" means repair or replacement of critical
23 infrastructure that has been, or is under threat of being damaged, impaired, or
24 destroyed by the declared state disaster or emergency.

- 1 4. "Disaster response period" means a period that begins ten days prior to, and ends
2 sixty calendar days after, the declared state disaster or emergency and includes any
3 extension of that time provided by executive order of the governor.
- 4 5. "Out-of-state business" means a business entity that, except for disaster or emergency
5 remediation work, has no business presence or nexus in this state and which is
6 requested by an officer or agency of this state, a political subdivision of this state, or a
7 business registered in this state to perform disaster or emergency remediation work in
8 this state, including an out-of-state business entity affiliated solely through common
9 ownership with a business registered in this state.
- 10 6. "Out-of-state employee" means an employee who does not work in the state, except
11 for disaster or emergency related work during the disaster response period.
- 12 7. "Registered business" means a business entity registered to do business in this state
13 prior to the declared state disaster or emergency.

14 **37-17.5-02. Business and employee status during and after disaster response period.**

- 15 1. An out-of-state business that conducts operations within this state for purposes of
16 performing disaster or emergency remediation work or services during the disaster
17 response period may not be considered to have established a level of presence that
18 would require that business to register to do business or file or remit state or local
19 taxes, or that would require that business or its out-of-state employees to be subject to
20 any state or local business licensing or registration requirements or state and local
21 taxes or fees including unemployment insurance, workers' compensation, state or
22 local occupational licensing fees, and sales and use tax on equipment used or brought
23 into the state temporarily for use during the disaster response period and
24 subsequently removed from the state. For purposes of any state or local tax on or
25 measured by, in whole or in part, net or gross income or receipts, all activity of the out-
26 of-state business which is conducted in this state under this chapter must be
27 disregarded with respect to any filing requirements for such tax including the filing
28 required for a unitary or combined group of which the out-of-state business may be a
29 part. For the purpose of apportioning income, revenue, or receipts, the performance by
30 an out-of-state business of any work under this chapter may not be sourced to or

1 otherwise impact or increase the amount of income, revenue, or receipts apportioned
2 to this state.

3 2. An out-of-state employee may not be considered to have established residency or a
4 presence in the state which would require that individual or that individual's employer
5 to file and pay income taxes or to be subjected to tax withholding or to file and pay any
6 other state or local tax or fee during the disaster response period. This includes any
7 related state or local employer withholding and remittance obligations, but does not
8 include any transaction taxes or fees as described in subsection 3.

9 3. Out-of-state businesses and out-of-state employees are subject to fuels taxes and
10 state or local sales or use taxes on materials or services consumed or used in this
11 state which are subject to sales or use taxes, hotel taxes, or car rental taxes or fees
12 which the out-of-state affiliated business or out-of-state employee purchases for use or
13 consumption in the state during the disaster response period, unless such taxes are
14 otherwise exempted during a disaster response period.

15 4. Any out-of-state business or out-of-state employee that remains in the state after the
16 disaster response period becomes subject to the state's normal standards for
17 establishing presence, residency, or doing business in this state and becomes subject
18 to any business or employee registration and tax requirements that apply.

19 **37-17.5-03. Notification by out-of-state business during and after disaster response**
20 **period.**

21 1. Upon request, an out-of-state business that enters the state shall provide to the tax
22 commissioner and secretary of state a statement that the business is in the state for
23 purposes of responding to the disaster or emergency. The statement must include the
24 business name, state of domicile, principal business address, federal tax identification
25 number, date of entry, and contact information.

26 2. Upon request, a registered business in this state shall provide the information required
27 in subsection 1 for any affiliate that enters this state which is an out-of-state business.
28 The notification must include contact information for the registered business in the
29 state.

- 1 3. The tax commissioner and secretary of state shall adopt rules and develop and issue
- 2 forms or online processes to carry out these administrative procedures and maintain
- 3 and make available an annual record of any designations pursuant to this chapter.

4 **SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure.