

SENATE BILL NO. 2095

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

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

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

15 ~~— **37-17.5-01. Definitions.**~~

16 ~~— As used in this chapter:~~

17 ~~— 1. "Critical infrastructure" means real and personal property that constitutes an essential~~
18 ~~component of a road or bridge; communications network; electric generation,~~
19 ~~transmission, or distribution system; oil or gas storage, transmission, or distribution~~
20 ~~system; or water storage, transmission, treatment, distribution, drainage, sewerage, or~~
21 ~~flood protection system.~~

22 ~~— 2. "Declared state disaster or emergency" means a disaster or emergency event for~~
23 ~~which a:~~

24 ~~— a. Disaster or emergency has been declared by the governor; or~~

1 ~~_____ b. Presidential declaration of a federal major disaster or emergency has been~~
2 ~~issued.~~

3 ~~_____ 3. "Disaster or emergency remediation work" means repair or replacement of critical~~
4 ~~infrastructure that has been, or is under threat of being damaged, impaired, or~~
5 ~~destroyed by the declared state disaster or emergency.~~

6 ~~_____ 4. "Disaster response period" means a period that begins ten days prior to, and ends~~
7 ~~sixty calendar days after, the declared state disaster or emergency and includes any~~
8 ~~extension of that time provided by executive order of the governor.~~

9 ~~_____ 5. "Out of state business" means a business entity that, except for disaster or emergency~~
10 ~~remediation work, has no business presence or nexus in this state and which is~~
11 ~~requested by an officer or agency of this state, a political subdivision of this state, or a~~
12 ~~business registered in this state to perform disaster or emergency remediation work in~~
13 ~~this state, including an out of state business entity affiliated solely through common~~
14 ~~ownership with a business registered in this state.~~

15 ~~_____ 6. "Out of state employee" means an employee who does not work in the state, except~~
16 ~~for disaster or emergency related work during the disaster response period.~~

17 ~~_____ 7. "Registered business" means a business entity registered to do business in this state~~
18 ~~prior to the declared state disaster or emergency.~~

19 ~~_____ **37-17.5-02. Business and employee status during and after disaster response period.**~~

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

~~2. An out-of-state employee may not be considered to have established residency or a presence in the state which would require that individual or that individual's employer to file and pay income taxes or to be subjected to tax withholding 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 3.~~

~~3. Out-of-state businesses and out-of-state employees are subject to fuels taxes and state or local sales or use taxes on materials or services 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 the state during the disaster response period, unless such taxes are otherwise exempted during a disaster response period.~~

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

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

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

~~2. Upon request, a registered business in this state shall provide the information required in subsection 1 for any affiliate that enters this state which is an out-of-state business.~~

~~The notification must include contact information for the registered business in the state.~~

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

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

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 electrical and telecommunication transmission infrastructure" means real and personal electrical and telecommunication transmission property so vital to the state that the incapacity or destruction of that electrical transmission or distribution system or telecommunications transmission system would have a debilitating impact on public health or safety, 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 electrical and telecommunication transmission 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 that, before the disaster remediation period, has no business presence in this state.

1 and which is in this state to perform disaster or emergency remediation work at the
2 request of a requesting entity.

3 6. "Out-of-state employee" means an employee employed by an out-of-state business.

4 7. "Registered business" means a business entity registered to do business in this state
5 prior to the declared state disaster or emergency.

6 8. "Requesting entity" means an officer or agency of this state, a political subdivision, or
7 a business registered in this state.

8 9. "State agency" means job service North Dakota, the secretary of state, the tax
9 commissioner, or workforce safety and insurance.

10 **37-17.5-02. Business and employee status during and after disaster response period.**

11 1. An out-of-state business that conducts operations within this state for purposes of
12 performing disaster or emergency remediation work or services during the disaster
13 response period must not be considered to have established a business presence that
14 would require that business or its out-of-state employees to be subject to any state
15 and local taxes or fees including unemployment insurance, workers' compensation, or
16 taxes administered by the tax commissioner. The out-of-state business or out-of-state
17 employee shall have a valid license to perform that business or occupation from the
18 principal place of business or employment.

19 2. During the disaster response period, the out-of-state business or out-of-state
20 employee may not be required to file or pay any state or local tax administered by a
21 state agency. The out-of-state business or out-of-state employee may not be required
22 to pay any sales and use tax on equipment used or brought into the state temporarily
23 for use during the disaster response period if the equipment is removed from the state
24 within a reasonable period of time after the disaster response period.

25 3. For purposes of any state or local tax on or measured by, in whole or in part, net or
26 gross income or receipts, all activity of the out-of-state business which is conducted in
27 this state under this chapter must be disregarded with respect to any filing
28 requirements for a tax, including the income tax return required for a unitary or
29 combined group of which the out-of-state business may be a part. For the purpose of
30 apportioning income, the apportionment factors attributable to the performance by an

1 out-of-state business of any work under this chapter may not be sourced to this state
2 by the out-of-state business or any member of its affiliated group.

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

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

14 6. After the disaster response period, any out-of-state business or out-of-state employee
15 that remains in the state after the disaster response period is subject to any business
16 or employee registration and tax requirements that apply.

17 **37-17.5-03. Notification by out-of-state business during and after disaster response**
18 **period.**

19 1. An out-of-state business that enters the state for disaster or emergency remediation
20 work shall provide to the state agencies, a statement that the business is in the state
21 for the sole purpose of responding to the disaster or emergency. The statement must
22 include the business name, or out-of-state employee's name, state of domicile,
23 principal business address, federal tax identification number, date of entry into this
24 state, and contact information, including the out-of-state business's tax matters
25 person. An out-of-state business must provide proof that its workers have worker's
26 compensation insurance to workforce safety and insurance.

27 2. A registered business in this state shall provide the information required in
28 subsection 1 for any out-of-state affiliate that enters this state.

29 3. Each state agency shall develop procedures and issue forms or online processes to
30 carry out these administrative procedures, and maintain and make available a record

1 of any designations made by an out-of-state business or out-of-state employee
2 pursuant to this chapter.

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