

5323

2013-2014 Regular Sessions

I N S E N A T E

May 16, 2013

Introduced by Sen. MAZIARZ -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications

AN ACT 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

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Short title. This act shall be known and may be cited as
2 the "Facilitating Business Rapid Response to State Declared Disasters
3 Act of 2013".
4 S 2. For purposes of this act, the following terms shall have the
5 following meanings:
6 1. "Registered business in the state" (or "registered business") means
7 a business entity that is currently registered to do business in the
8 state prior to the declared state disaster or emergency.
9 2. "Out-of-state business" means for purposes of this act a business
10 entity that has no presence in the state and conducts no business in the
11 state whose services are requested by a registered business or by a
12 state or local government for purposes of performing disaster or emer-
13 gency related work in the state. This shall also include a business
14 entity that is affiliated with the registered business in the state
15 solely through common ownership. The "out-of-state business" has no
16 registrations or tax filings or nexus in the state prior to the declared
17 state disaster or emergency.
18 3. "Out-of-state employee" means for purposes of this act an employee
19 who does not work in the state except for "disaster or emergency related
20 work" during the "disaster period".

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [] is old law to be omitted.

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1 4. "Infrastructure" means for purposes of this act property and
2 equipment owned or used by communications networks, electric generation,
3 transmission and distribution systems, gas distribution systems, water
4 pipelines, and public roads and bridges and related support facilities
5 that service multiple customers or citizens including but not limited to
6 real and personal property such as buildings, offices, lines, poles,
7 pipes, structures and equipment.

8 5. "Declared state disaster or emergency" means a disaster or emergen-
9 cy event (a) for which a governor's state of emergency proclamation has
10 been issued, (b) for which a presidential declaration of federal major
11 disaster or emergency has been issued, or (c) other disaster or emergen-
12 cy event within this state for which a good faith response effort is
13 required, and for which the secretary of state is given notification
14 from the registered business and such official designates such event as
15 a disaster or emergency thereby invoking the provisions of this act.

16 6. "Disaster period" means a period that begins within ten days of the
17 first day of the governor's proclamation, the president's declaration or
18 designation by secretary of state (whichever occurs first) and that
19 extends for a period of sixty calendar days after the end of the
20 declared disaster or emergency period, or any longer period authorized
21 by the commissioner of the department of taxation and finance.

22 7. "Disaster or emergency related work" means repairing, renovating,
23 installing, building, rendering services or other business activities
24 that relate to infrastructure that has been damaged, impaired or
25 destroyed by the declared state disaster or emergency.

26 S 3. 1. An out-of-state business that conducts operations within the
27 state for purposes of performing work or services related to a declared
28 state disaster or emergency during the disaster period shall not be
29 considered to have established a level of presence that would require
30 that business to register, file and/or remit state or local taxes or
31 that would require that business or its out-of-state employees to be
32 subject to any state licensing or registration requirements. This
33 includes any and all state or local business licensing or registration
34 requirements or state and local taxes or fees including but not limited
35 to unemployment insurance, and sales and use tax or ad valorem tax on
36 equipment used or consumed during the disaster period. For purposes of
37 any state or local tax on or measured by, in whole or in part, net or
38 gross income or receipts, all activity of the out-of-state business that
39 is conducted in this state pursuant to this act shall be disregarded
40 with respect to any filing requirements for such tax including the
41 filing required for a unitary or combined group of which the out-of-
42 state business may be a part.

43 2. Any out-of-state employee as defined in this act shall not be
44 considered to have established residency or a presence in the state that
45 would require that person or that person's employer to file and pay
46 income taxes or to be subjected to income tax withholdings or to file
47 and pay any other state or local tax or fee during the disaster period.
48 This includes any related state or local employer withholding and remit-
49 tance obligations.

50 3. Out-of-state businesses and out-of-state employees shall be
51 required to pay transaction taxes and fees including but not limited to
52 fuel taxes or sales/use taxes on materials or services subject to
53 sales/use tax, hotel taxes, car rental taxes or fees that the out-of-
54 state affiliated business or out-of-state employee purchases for use or
55 consumption in the state during the disaster period, unless such taxes
56 are otherwise exempted during a disaster period.

1 4. Any out-of-state business or out-of-state employee that remains in
2 the state after the disaster period will become subject to the state's
3 normal standards for establishing presence, residency or doing business
4 in the state and will therefore become responsible for any business or
5 employee tax requirements that ensue.

6 S 4. 1. The out-of-state business that enters the state shall, upon
7 request, provide to the department of taxation and finance that it is in
8 the state for purposes of responding to the disaster or emergency which
9 statement shall include the business' name, state of domicile, principle
10 business address, federal tax identification number, date of entry, and
11 contact information.

12 2. A registered business in the state shall, upon request, provide the
13 information required in subdivision 1 of this section for any affiliate
14 that enters the state that is an out-of-state business. The notification
15 shall also include contact information for the registered business in
16 the state.

17 3. An out-of-state business or an out-of-state employee that remains
18 in the state after the disaster period shall complete state and local
19 registration and filing requirements that ensue as a result of estab-
20 lishing the requisite business presence or residency in the state appli-
21 cable under the existing rules.

22 4. The department of taxation and finance shall promulgate necessary
23 regulations, develop and issue forms or online processes to carry out
24 these administrative procedures.

25 S 5. This act shall take effect immediately.