

[Second Reprint]

SENATE, No. 2518

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED MAY 10, 2018

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Assemblywoman ANNETTE QUIJANO

District 20 (Union)

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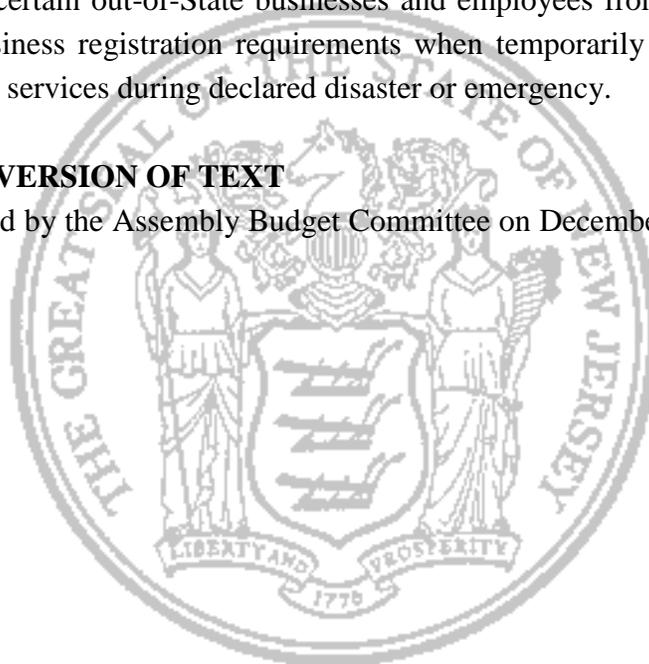
Senator Oroho, Assemblyman S.Kean and Assemblywoman Murphy

SYNOPSIS

Excludes certain out-of-State businesses and employees from certain taxes, fees, and business registration requirements when temporarily performing in-State work or services during declared disaster or emergency.

CURRENT VERSION OF TEXT

As reported by the Assembly Budget Committee on December 6, 2018, with amendments.



(Sponsorship Updated As Of: 12/18/2018)

1 AN ACT excluding certain out-of-State businesses and employees
 2 ¹restoring critical infrastructure¹ from certain taxes, fees, and
 3 business registration requirements when temporarily performing
 4 work or services in this State during a declared disaster or
 5 emergency **[,]** and¹ supplementing chapter 50 of Title 54 of the
 6 Revised Statutes.

7
 8 **BE IT ENACTED** by the Senate and General Assembly of the State
 9 of New Jersey:

10
 11 1. As used in P.L. , c. (C.) (pending before the
 12 Legislature as this bill):

13 ¹“Critical infrastructure” means property and equipment owned
 14 or used by communication networks, electric generation,
 15 transmission, and distribution systems, gas distribution systems,
 16 water pipelines and related support facilities that service multiple
 17 customers and residents including, but not limited to, real and
 18 personal property such as buildings, offices, lines, poles, pipes,
 19 structures, and equipment;¹

20 “Declared disaster or emergency” means a disaster or emergency
 21 event for which a Governor’s State of Emergency Proclamation is
 22 issued or for which a Presidential Declaration of a Major Disaster
 23 or Emergency is issued;

24 “Director” means the Director of the Division of Taxation in the
 25 Department of the Treasury;

26 “Disaster or emergency related work” means repairing,
 27 renovating, installing, building, rendering services, or other
 28 business activities that relate to ¹critical¹ infrastructure damaged,
 29 impaired, or destroyed by the declared disaster or emergency;

30 “Disaster period” means a period beginning 10 days before the
 31 first day of the Governor’s proclamation or the President’s
 32 declaration, whichever occurs first, and ending 60 days after the end
 33 of the declared disaster or emergency period;

34 ²“Home state” means the state, or other jurisdiction, in which an
 35 out-of-State business maintains its principal place of business or, in
 36 the case of an out-of-State employee, the principal location where
 37 the employee engages in his or her professional practice;²

38 ¹**[**“Infrastructure” means property and equipment owned or used
 39 by communication networks, electric generation, transmission, and
 40 distribution systems, gas distribution systems, water pipelines, and
 41 public roads and bridges and related support facilities that service
 42 multiple customers and residents including, but not limited to, real
 43 and personal property such as buildings, offices, lines, poles, pipes,
 44 structures, and equipment;**]**¹

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SBA committee amendments adopted October 22, 2018.

²Assembly ABU committee amendments adopted December 6, 2018.

1 “Out-of-State business” means a business entity that does not
2 have a physical presence in this State and does not otherwise
3 engage in business activity or do business in this State, but whose
4 services are requested by a business that is registered to do business
5 in this State or by a State or local government for purposes of
6 performing disaster or emergency related in this State, provided that
7 an out-of-State business also includes a business entity that is
8 affiliated with the business that is registered to do business in this
9 State solely through common ownership and provided further that
10 the out-of-State business does not have a physical presence in this
11 State, does not engage in activities in this State, is not doing
12 business in this State, and does not have registration or tax filing
13 obligations ¹, other than being included in a combined return as a
14 non-taxable member pursuant to section 18 of P.L.2018, c.48
15 (C.54:10A-4.6),¹ in this State prior to the declared disaster or
16 emergency; and

17 “Out-of-State employee” means an employee who does not work
18 in this State, except for disaster or emergency related work ¹on
19 critical infrastructure¹ during the disaster period.
20

21 2. a. An out-of-State business that conducts operations within
22 this State for purposes of performing ¹**work or rendering services**
23 **related to a declared disaster or emergency** disaster or emergency
24 related work¹ during the disaster period shall not be considered to
25 have established a level of physical presence or engaged in business
26 activities at a level that is sufficient to require that out-of-State
27 business to ²:

28 (1)² register, file, and report and pay State or local taxes or fees
29 ²that require the filing of a New Jersey tax return, including but not
30 limited to employer withholding and unemployment insurance;² or
31 ²**[to]**

32 (2)² require that out-of-State business, or its out-of-State
33 employees, to be subject to any State or local licensing or
34 registration requirements ²**[. This includes]** , including but not
35 limited to² all State and local business licensing and registration
36 requirements ²[and all State and local taxes and fees including, but
37 not limited to, unemployment insurance sales and use tax, and any
38 ad valorem tax on equipment used or consumed during the disaster
39 period ¹and not remaining in the State¹] ; provided, however, that
40 the out-of-State business, or its out-of-State employees, shall be
41 duly licensed, or otherwise legally authorized to engage in the
42 activity, in the applicable home state².

43 For purposes of ²**[a]** this section: for any exempted² State or
44 local tax imposed on or measured by net or gross income or
45 receipts, all activity of the out-of-State business conducted in this
46 State ¹related to the declared disaster or emergency¹, in accordance

1 with P.L. , c. (C.) (pending before the Legislature as this
2 bill), shall be disregarded for any filing requirements for that tax,
3 including the filing required for a unitary or combined group of
4 which the out-of-State business may be a part.

5 b. An out-of-State employee shall not be considered to have
6 established residency or a physical presence or engaged in business
7 activities in this State that are sufficient to require that out-of-State
8 employee or that out-of-State employee's employer to report and
9 pay State or local income taxes ²[, to be subjected to State or local
10 tax withholdings] that require the filing of a New Jersey tax return²,
11 or to report and pay any other State or local tax or fee ²that requires
12 the filing of a New Jersey tax return² during the disaster period.
13 This includes any related employer withholding and reporting and
14 payment obligations imposed by the State or a local government.
15

16 3. An out-of-State business or out-of-State employee shall be
17 required to pay State and local transaction taxes and fees including,
18 but not limited to, fuel taxes, sales and use taxes on receipts from
19 sales of goods and services subject to sales and use taxes, hotel and
20 motel occupancy taxes and fees, and motor vehicle rental taxes and
21 fees that the out-of-State business or the out-of-State employee
22 purchases for use or consumption in this State during the disaster
23 period, unless those transactions are ¹otherwise¹ exempt, excluded,
24 or not subject to ¹a¹ State or local tax or fee during the disaster
25 period.
26

27 4. An out-of-State business or out-of-State employee remaining
28 in this State after the disaster period shall be subject to the State's
29 normal standards for establishing physical presence or residency,
30 engaging in business activity, and doing business in this State, and
31 shall be responsible for any ensuing State or local tax liabilities or
32 requirements of the business or an employee of the business.
33

34 5. a. An out-of-State business that enters this State shall, not
35 later than ¹~~30~~ 45¹ days after the date the out-of-State business
36 enters this State, provide a written statement to the director
37 indicating that the out-of-State business is doing business in this
38 State for purposes of ¹~~responding to the declared disaster or~~
39 ~~emergency~~ performing disaster or emergency related work¹, which
40 written statement shall include the name of the business, the state of
41 the business's domicile, the principal address of the business, the
42 business's federal tax identification number, the date of the
43 business's entry into this State, and the business's contact
44 information.

45 b. A business that is registered to do business in this State shall
46 provide a written statement that includes the information required to
47 be provided to the director in accordance with subsection a. of this

1 section for each out-of-State business affiliate that enters this State
2 for purposes of ¹【responding to the declared disaster or emergency】
3 performing disaster or emergency related work¹. The written
4 notification provided to the director also shall include contact
5 information for the business that is registered to do business in this
6 State, and shall be provided to the director by the business that is
7 registered to do business in this State not later than 30 days after the
8 date the out-of-State business enters this State.

9 c. The written statement and any information required to be
10 provided to the director by an out-of-State business or by a business
11 that is registered to do business in this State, on behalf of an
12 affiliate, shall be a public or government record for purposes of
13 P.L.1963, c.73 (C.47:1A-1 et seq.) and P.L.2001, c.404 (C.47:1A-
14 5 et al.), and shall be open to the public for inspection. The written
15 statement and any information required to be provided to the
16 director shall not be a confidential or privileged record or file of the
17 director subject to the provisions of R.S.54:50-8 and R.S.54:50-9.

18
19 6. An out-of-State business or an out-of-State employee that
20 maintains a physical presence in this State or engages in business
21 activity in this State after the disaster period shall comply with all
22 State and local business registration requirements and all licensing
23 and filing requirements ensuing as a result of establishing the
24 required business presence or residency in this State.

25
26 7. Notwithstanding the provisions of the “Administrative
27 Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.) to the
28 contrary, the director may adopt immediately upon filing with the
29 Office of Administrative Law such rules and regulations as the
30 director determines to be necessary and appropriate to effectuate the
31 purposes of P.L. , c. (C.) (pending before the Legislature as
32 this bill), which rules and regulations shall be effective for a period
33 not to exceed 360 days following the effective date of
34 P.L. , c. (C.) (pending before the Legislature as this bill) and
35 may thereafter be amended, adopted, or readopted by the director in
36 accordance with the requirements of P.L.1968, c.410 (C.52:14B-1
37 et seq.).

38
39 8. This act shall take effect immediately.