

HOUSE BILL 551

By Hazlewood

AN ACT to amend Tennessee Code Annotated, Title 58; Title 62; Title 67 and Title 68, relative to taxation, registration, and licensing of critical infrastructure companies and their employees responding to disaster or emergency.

WHEREAS, the General Assembly finds that facilitating rapid response by the State's critical infrastructure companies is an integral component of Tennessee's effective preparation and rapid response to any proclaimed state of emergency; and

WHEREAS, these companies often must temporarily bring into the State resources, property, and personnel from other states that previously have had no connection to the State to expedite the often enormous and overwhelming task of restoring and repairing communications facilities and other critical infrastructure facilities in the State; and

WHEREAS, during such time of operating in the State on a temporary basis solely for purposes of helping the State recover from the proclaimed state of emergency, the General Assembly finds these companies and their individual employees should not be burdened by taxes, registrations, licensing or any other "regular course of business" requirements as a result of such activities, consistent with the intent of § 58-2-102 and the treatment afforded to out-of-state resources and workers temporarily in the State under § 58-2-403; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 58, Chapter 2, is amended by adding Sections 2 through 6 as a new part.

SECTION 2. Short title.

This part shall be known and may be cited as the "Facilitating Business Rapid Response to State Declared Disaster Act."

SECTION 3. Definitions.

As used in this part:

(1) "Critical infrastructure" means property or equipment, including, but not limited to, real and personal property such as buildings, offices, lines, poles, pipes, structures, and equipment that:

(A) Is owned or used by telecommunications service networks, mobile telecommunications service networks, internet access service networks, video programming service networks, direct-to-home satellite television programming service facilities, electric generation, transmission and distribution systems, gas distribution systems, water pipelines, and related support facilities; and

(B) Services multiple customers or citizens;

(2) "Disaster or emergency related work" means:

(A) Repairing, renovating, installing, building, or rendering services or other business activities that relate to critical infrastructure that has been damaged, impaired, or destroyed during a disaster or emergency, as those terms are defined in § 58-2-101; and

(B) Any activities conducted in good faith before a possible disaster or emergency to prepare to provide the work described in subdivision (2)(A);

(3) "Registered business" means a critical infrastructure business entity that is currently registered to do business in this state;

(4) "Responding out-of-state business" means a business entity that, except for disaster or emergency related work, has no presence in the state, conducts no business in this state, and whose services are requested by a registered business or by a state or local government for purposes of performing disaster or emergency related work in the state. "Responding out-of-state business" includes a business entity that is affiliated with a registered business solely through common ownership; and

(5) "Responding out-of-state employee" means an employee of a responding out-of-state business or registered business who does not work in the state, except for disaster or emergency related work.

SECTION 4. Obligations of responding out-of-state businesses and employees.

(a) Notwithstanding the protections and presumptions established by this part, responding out-of-state businesses and responding out-of-state employees shall pay the following transaction taxes and fees, when the tax or fee is determined, collected, remitted, and reported by others duly registered and required to collect such taxes and fees:

(1) Fuel excise taxes imposed by the Petroleum Products and Alternative Fuels Tax Law, compiled in title 67, chapter 3;

(2) State and local sales and use taxes imposed by the Retailers' Sales Tax Act, compiled in title 67, chapter 6;

(3) Local hotel occupancy taxes imposed under title 67, chapter 4, part 14 or pursuant to private act;

(4) Taxes imposed on the purchase or consumption of intoxicating liquors, beer, and other alcoholic beverages under title 57; and

(5) Any other transaction tax or fee assessed, collected, or imposed on specific transactions or activities in the usual course of business without imposing any obligation on a responding out-of-state business or responding out-of-state employee to register, file a return, or otherwise self-report and remit the tax or fee due.

(b) This part does not limit or otherwise alter or amend the power of a court to exercise personal or in rem jurisdiction over responding out-of-state businesses, responding out-of-state employees, or their property; provided, however, that such

jurisdiction shall not be used as a basis to impose a tax, fee, or other obligation contrary to the protections provided by this part.

(c) This part does not confer any immunity from any criminal prosecution in any court of this state.

SECTION 5. Protections for responding out-of-state businesses and employees.

(a) A responding out-of-state employee:

(1) Does not establish residency or a presence in the state that would require that person or that person's employer to administer, file, or pay taxes or fees or to be subjected to pay any other state or local tax or fee, except as expressly provided for in this part; and

(2) When holding a license, certificate, or other permit issued by the state of the employee's permanent residence or any other state evidencing the meeting of qualifications for professional, mechanical, or other skills, is deemed licensed, certified, or permitted by the state to render disaster or emergency related work involving such skill and is not required to register, report, or pay any tax or fee related to such licensure, certification, or permitting in this state.

(b) A responding out-of-state business does not establish a level of presence that would require that business to register, file, or remit state or local taxes or that would subject that business to any state licensing or registration requirements.

(c) Except as expressly provided for elsewhere in this part, the protections afforded by this section should be interpreted broadly to relieve a responding out-of-state business and a responding out-of-state employee from any obligation to provide documentation, registration, tax, fee, or other submission or filing with the state or its political subdivisions, including, but not limited to, the following:

(1) Unemployment insurance;

(2) State and local occupational licensing fees;

(3) Registration for state and local sales and use tax, imposed by the Retailers' Sales Tax Act, compiled in title 67, chapter 6, or any requirement to collect tax, file returns, or otherwise self-report or remit any sales or use tax to the state as a result of or in relation to any disaster or emergency related work;

(4) State and local ad valorem tax on tangible personal property brought into the state temporarily for use in disaster or emergency related work and subsequently removed from the state, such property being deemed not to have acquired a situs in the state; provided, however, that any tangible personal property sold, transferred, or leased to a person other than a responding out-of-state business or responding out-of-state employee is deemed to acquire situs in this state on the date of such sale, transfer, or lease and thereafter shall be subject to use tax, ad valorem tax, and any other tax imposed directly or indirectly on such property;

(5) Any registration or regulation of businesses or public utilities by the secretary of state, public utilities commission, or any other agency or instrumentality of the state; and

(6) The Excise Tax Law of 1999, compiled in title 67, chapter 4, part 20; the Franchise Tax Law of 1999, compiled in title 67, chapter 4, part 20; the Business Tax Law, compiled in title 67, chapter 4, part 7; and any other state or local tax on or measured by, in whole or in part, net or gross income or receipts, so that all disaster or emergency related work of the responding out-of-state business that is conducted in this state shall be disregarded with respect to any filing requirements for such tax including the filing required for a unitary or combined group of which the responding out-of-state business may be a part.

Also, for the purpose of apportioning income, revenue, or receipts the disaster, or emergency related work performed by a responding out-of-state business in this state shall not be sourced to this state and shall not otherwise impact or increase the amount of income, revenue, or receipts apportioned to this state.

SECTION 6. Presence other than disaster or emergency related work.

In the event a responding out-of-state business or a responding out-of-state employee either remains in the state after the completion of emergency or disaster related work or otherwise ceases to qualify as a responding out-of-state business or responding out-of-state employee, such business or individual loses the protections of this part effective as of the first date on which the business or individual no longer qualifies as a responding out-of-state business or responding out-of-state employee.

SECTION 7. The headings to sections, chapters, and parts in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 8. This act shall take effect upon becoming a law, the public welfare requiring it.