

Sixty-fourth
Legislative Assembly
of North Dakota

ENGROSSED 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, on critical electrical and telecommunication transmission
4 infrastructure, and to provide a limited exemption for that purpose from state and local taxes
5 and fees, licensing, and other requirements during the time in this state employed in disaster or
6 emergency remediation work; and to declare an 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 electrical and telecommunication transmission infrastructure" means real and
13 personal electrical and telecommunication transmission property so vital to the state
14 that the incapacity or destruction of that electrical transmission or distribution system
15 or telecommunications transmission system would have a debilitating impact on public
16 health or safety, economic, and physical security of the state or region.
- 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 electrical and telecommunication transmission infrastructure that has been, or is under

1 threat of being damaged, impaired, or destroyed by the declared state disaster or
2 emergency.

3 4. "Disaster response period" means a period that begins ten days before, and ends sixty
4 calendar days after, the declared state disaster or emergency and includes any
5 extension of that time provided by executive order of the governor.

6 5. "Out-of-state business" means a business entity, including an out-of-state business
7 affiliated solely through common ownership with a business registered in this state
8 that, before the disaster remediation period, has no business presence in this state
9 and which is in this state to perform disaster or emergency remediation work at the
10 request of a requesting entity.

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

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

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

18 **37-17.5-02. Business and employee status during and after disaster response period.**

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

27 2. During the disaster response period, the out-of-state business or out-of-state
28 employee may not be required to file or pay any state or local tax administered by a
29 state agency. The out-of-state business or out-of-state employee may not be required
30 to pay any sales and use tax on equipment used or brought into the state temporarily

1 for use during the disaster response period if the equipment is removed from the state
2 within a reasonable period of time after the disaster response period.

3 3. For purposes of any state or local tax on or measured by, in whole or in part, net or
4 gross income or receipts, all activity of the out-of-state business which is conducted in
5 this state under this chapter must be disregarded with respect to any filing
6 requirements for a tax, including the income tax return required for a unitary or
7 combined group of which the out-of-state business may be a part. For the purpose of
8 apportioning income, the apportionment factors attributable to the performance by an
9 out-of-state business of any work under this chapter may not be sourced to this state
10 by the out-of-state business or any member of its affiliated group.

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

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

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

25 **37-17.5-03. Notification by out-of-state business during and after disaster response**
26 **period.**

27 1. An out-of-state business that enters the state for disaster or emergency remediation
28 work shall provide to the state agencies, a statement that the business is in the state
29 for the sole purpose of responding to the disaster or emergency. The statement must
30 include the business name, or out-of-state employee's name, state of domicile,
31 principal business address, federal tax identification number, date of entry into this

- 1 state, and contact information, including the out-of-state business's tax matters
2 person. An out-of-state business must provide proof that its workers have worker's
3 compensation insurance to workforce safety and insurance.
- 4 2. A registered business in this state shall provide the information required in
5 subsection 1 for any out-of-state affiliate that enters this state.
- 6 3. Each state agency shall develop procedures and issue forms or online processes to
7 carry out these administrative procedures, and maintain and make available a record
8 of any designations made by an out-of-state business or out-of-state employee
9 pursuant to this chapter.

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