

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

Senate Bill 608

BY SENATORS SWOPE AND CLINE

[Introduced January 24, 2020; referred
to the Committee on Finance]

INTERIM
BILL

FISCAL
NOTE

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
 2 designated §15-5-22a; and to amend and reenact §15-5-26 of said code, all relating to
 3 providing exemptions from certain taxes for out-of-state businesses, out-of-state affiliates
 4 of in-state businesses, and their employees for work responding to declared disasters and
 5 states of emergency; making legislative findings; defining terms; specifying tax
 6 exemptions and their scope; establishing filing and notice procedures; and providing an
 7 immediate date of effect.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 5. DIVISION OF HOMELAND SECURITY AND EMERGENCY
 MANAGEMENT.**

§15-5-22a. Facilitating Business Rapid Response to State Declared Disasters Act of 2020.

1 (a) This section may be cited as the “Facilitating Business Rapid Response to State
 2 Declared Disasters Act of 2020”.

3 (b) Findings. — The Legislature finds that:

4 (1) During times of storm, flood, fire, earthquake, hurricane or other disaster or emergency,
 5 many businesses bring in resources and personnel from other states throughout the United States
 6 on a temporary basis to expedite the often enormous and overwhelming task of cleaning up,
 7 restoring and repairing damaged buildings, equipment and property or even deploying or building
 8 new replacement facilities in the state.

9 (2) This may involve the need for out-of-state businesses, including out-of-state affiliates
 10 of businesses based in the state to bring in resources, property and/or personnel that previously
 11 have had no connection to the state, to perform activity in the state including, but not limited to,
 12 repairing, renovating, installing, building, rendering services or other business activities and for
 13 which personnel may be located in the state for extended periods of time to perform such
 14 activities.

15 (3) During such time of operating in the state on a temporary basis solely for purposes of
16 helping the state recover from the disaster or emergency, these businesses and individual
17 employees should not be burdened by any requirements for business and employee taxes as a
18 result of such activities in the state for a temporary period.

19 (4) The state's nexus and residency thresholds are intended for businesses and
20 individuals in the state as part of the conduct of regular business operations or who intend to
21 reside in the state and should not be directed at businesses and individuals coming into the state
22 on a temporary basis to provide help and assistance in response to a declared state disaster or
23 emergency.

24 (5) To ensure that businesses may focus on quick response to the needs of the state and
25 its citizens during a declared state disaster or emergency, it is appropriate for the Legislature to
26 deem that such activity for a reasonable period of time before, during and after the disaster or
27 emergency for repairing and restoration of the often devastating damage to critical property and
28 infrastructure in the state as defined in this section shall not establish presence, residency nor
29 doing business in the state nor any other criteria for purposes of state and local taxes, licensing
30 and regulatory requirements.

31 (c) Definitions. — For purposes of this section, the following terms shall have the following
32 meanings:

33 “Critical Infrastructure” means property and equipment owned or used by communications
34 networks, electric generation, transmission and distribution systems, gas distribution systems,
35 water pipelines and related support facilities that services multiple customers or citizens including,
36 but not limited to real, and personal property such as buildings, offices, lines, poles, pipes,
37 structures and equipment.

38 “Disaster or emergency related work” means repairing, renovating, installing, building,
39 rendering services or other business activities that relate to critical infrastructure that has been
40 damaged impaired or destroyed by the declared state disaster or emergency.

41 “Disaster response period” means a period that begins ten days prior to the first day of the
42 Governor’s Proclamation, the President’s Declaration or designation by another authorized official
43 of the state as set forth in this section, whichever occurs first, and that extends 60 calendar days
44 after the declared state disaster or emergency, or any longer period authorized by the Governor
45 or the State Resiliency Office.

46 “Declared state disaster or emergency” means a disaster or emergency event: (1) For
47 which a Governor’s State of Emergency Proclamation has been issued; (2) for which a
48 Presidential Declaration of a Federal Major Disaster or Emergency has been issued; or (3) other
49 disaster or emergency event within the state for which a good faith response effort is required,
50 and for which another authorized official of the state is given notification from the registered
51 business and such official designates such event as a disaster or emergency thereby invoking
52 the provisions of this section.

53 “Out-of-state business” means for purposes of this legislation a business entity that,
54 except for disaster or emergency related work, has no presence in the state and conducts no
55 business in the state whose services are requested by a registered business or by a state or local
56 government for purposes of performing disaster or emergency related work in the state. This shall
57 also include a business entity that is affiliated with the registered business in the state solely
58 through common ownership. The out-of-state business has no registrations or tax filings or nexus
59 in the state other than disaster or emergency related work during the tax year immediately
60 preceding the declared state disaster or emergency.

61 “Out-of-state employee” means for purposes of this legislation an employee who does not
62 work in the state, except for disaster or emergency related work during the “disaster response
63 period.”

64 “Registered business in the state” or “registered business” means a business entity that
65 is currently registered to do business in the state prior to the declared state disaster or emergency.

66 (d) Obligations after disaster response period. —

67 (1) An out-of-state business that conducts operations within the state for purposes of
68 performing work or services related to a declared state disaster or emergency during the disaster
69 response period shall not be considered to have established a level of presence that would require
70 that business to register, file and/or remit state or local taxes or that would require that business
71 or its out-of-state employees to be subject to any state licensing or registration requirements. This
72 includes any and all state or local business licensing or registration requirements or state and
73 local taxes or fees including, but not limited to unemployment insurance, state or local
74 occupational licensing fees and sales and use tax or *ad valorem* tax on equipment brought into
75 the state temporarily (for use during the disaster response period and subsequently removed from
76 the state), Public Service Commission or Secretary of State licensing and regulatory
77 requirements. For purposes of any state or local tax on or measured by, in whole or in part, net
78 or gross income or receipts, all activity of the out-of-state business that is conducted in this state
79 pursuant to this section shall be disregarded with respect to any filing requirements for such tax
80 including the filing required for a unitary or combined group of which the out-of-state business
81 may be a part. Also, for the purpose of apportioning income, revenue or receipts the performance
82 by an out-of-state business of any work in accordance with this code section shall not be sourced
83 to or shall not otherwise impact or increase the amount of income, revenue or receipts apportioned
84 to this state.

85 (2) Any out-of-state employee as defined herein shall not be considered to have
86 established residency or a presence in the state that would require that person or that person's
87 employer to file and pay income taxes or to be subjected to tax withholdings or to file and pay any
88 other state or local tax or fee during the disaster response period. This includes any related state
89 or local employer withholding and remittance obligations but does not include any transaction
90 taxes or fees as described in subdivision (d)(3) of this section.

91 (3) Transaction taxes and fees. — Out-of-state businesses and out-of-state employees
92 shall be required to pay transaction taxes and fees including, but not limited to, fuel taxes or

93 sales/use taxes on materials or services consumed or used in the state subject to sales/use tax,
94 hotel taxes, car rental taxes or fees that the out-of-state affiliated business or out-of-state
95 employee purchases for use or consumption in the state during the disaster response period,
96 unless such taxes are otherwise exempted during a disaster response period.

97 (4) Business or employee activity after disaster response period. Any out-of-state business
98 or out-of-state employee remaining in the state after the disaster response period will become
99 subject to the state's normal standards for establishing presence, residency or doing business in
100 the state and will therefore become responsible for any business or employee tax requirements
101 that ensue.

102 (e) Administration. —

103 (1) Notification of out-of-state business during disaster response period. —

104 (A) The out-of-state business that enters the state shall, upon request, provide to the West
105 Virginia State Resiliency Office a statement that it is in the state for purposes of responding to the
106 disaster or emergency, which statement shall include the business' name, state of domicile,
107 principal business address, federal tax identification number, date of entry and contact
108 information.

109 (B) A registered business in the state shall, upon request, provide the information required
110 in by this subdivision for any affiliate that enters the state that is an out-of-state business. The
111 notification shall also include contact information for the registered business in the state.

112 (2) Notification of intent to remain in state. — An out-of-state business or an out-of-state
113 employee that remains in the state after the disaster response period shall complete state and
114 local registration, licensing and filing requirements that ensue as a result of establishing the
115 requisite business presence or residency in the state applicable under the existing rules.

116 (3) Procedures. — The West Virginia State Resiliency Office shall promulgate necessary
117 regulations, develop and issue forms or online processes, and maintain and make available an
118 annual record of any designations pursuant to this section to carry out these administrative

119 procedures.

120 (f) Effective date. — This section shall be effective immediately upon passage by the

121 Legislature.

§15-5-26. Tax exemption.

1 (a) The board shall not be required to pay any taxes and assessments to the state or any
2 political subdivision of the state upon any of its moneys, properties or assets or upon its
3 obligations or other evidences of indebtedness pursuant to the provisions of this article, or upon
4 any moneys, funds, revenues or other income held or received by the West Virginia disaster
5 recovery board.

6 (b) An out-of-state business that conducts operations within the state for purposes of
7 performing work or services related to a declared state disaster or emergency during the disaster
8 response period shall be exempt from taxation and licensing requirements during the disaster
9 response period as set forth in §15-5-22a(d) of this code.

NOTE: The purpose of this bill is to facilitate prompt and effective response to any state of emergency in West Virginia by exempting out-of-state employees and businesses, including affiliates of in-state businesses, that temporarily provide resources and personnel in the state during a state of emergency from state tax and licensing requirements that would otherwise be applicable under the state's residency requirements.

This bill is recommended by the Joint Committee on Flooding for introduction and passage in the 2020 Regular Session.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.