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LEGISLATIVE FISCAL ESTIMATE: Yes

VETO MESSAGE: No

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FOLLOWING WERE PRINTED:

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RWH/JA

P.L. 2019, CHAPTER 7, *approved January 31, 2019*
Senate, No. 2518 (*Second Reprint*)

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

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

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

24 "Out-of-State employee" means an employee who does not work
25 in this State, except for disaster or emergency related work ¹on
26 critical infrastructure¹ during the disaster period.

27
28 2. a. An out-of-State business that conducts operations within
29 this State for purposes of performing ¹["work or rendering services
30 related to a declared disaster or emergency"] disaster or emergency
31 related work¹ during the disaster period shall not be considered to
32 have established a level of physical presence or engaged in business
33 activities at a level that is sufficient to require that out-of-State
34 business to ²:

35 (1)² register, file, and report and pay State or local taxes or fees
36 ²that require the filing of a New Jersey tax return, including but not
37 limited to employer withholding and unemployment insurance;² or
38 ²["to"]

39 (2)² require that out-of-State business, or its out-of-State
40 employees, to be subject to any State or local licensing or
41 registration requirements ²[" . This includes"] , including but not
42 limited to² all State and local business licensing and registration
43 requirements ²["and all State and local taxes and fees including, but
44 not limited to, unemployment insurance sales and use tax, and any
45 ad valorem tax on equipment used or consumed during the disaster
46 period ¹and not remaining in the State¹"] ; provided, however, that

1 the out-of-State business, or its out-of-State employees, shall be
2 duly licensed, or otherwise legally authorized to engage in the
3 activity, in the applicable home state².

4 For purposes of ²**[a]** this section: for any exempted² State or
5 local tax imposed on or measured by net or gross income or
6 receipts, all activity of the out-of-State business conducted in this
7 State ¹related to the declared disaster or emergency¹, in accordance
8 with P.L. , c. (C.) (pending before the Legislature as this
9 bill), shall be disregarded for any filing requirements for that tax,
10 including the filing required for a unitary or combined group of
11 which the out-of-State business may be a part.

12 b. An out-of-State employee shall not be considered to have
13 established residency or a physical presence or engaged in business
14 activities in this State that are sufficient to require that out-of-State
15 employee or that out-of-State employee's employer to report and
16 pay State or local income taxes ²**[**, to be subjected to State or local
17 tax withholdings **]** that require the filing of a New Jersey tax return²,
18 or to report and pay any other State or local tax or fee ²that requires
19 the filing of a New Jersey tax return,² during the disaster period.
20 This includes any related employer withholding and reporting and
21 payment obligations imposed by the State or a local government.
22

23 3. An out-of-State business or out-of-State employee shall be
24 required to pay State and local transaction taxes and fees including,
25 but not limited to, fuel taxes, sales and use taxes on receipts from
26 sales of goods and services subject to sales and use taxes, hotel and
27 motel occupancy taxes and fees, and motor vehicle rental taxes and
28 fees that the out-of-State business or the out-of-State employee
29 purchases for use or consumption in this State during the disaster
30 period, unless those transactions are ¹otherwise¹ exempt, excluded,
31 or not subject to ¹a¹ State or local tax or fee during the disaster
32 period.
33

34 4. An out-of-State business or out-of-State employee remaining
35 in this State after the disaster period shall be subject to the State's
36 normal standards for establishing physical presence or residency,
37 engaging in business activity, and doing business in this State, and
38 shall be responsible for any ensuing State or local tax liabilities or
39 requirements of the business or an employee of the business.
40

41 5. a. An out-of-State business that enters this State shall, not
42 later than ¹**[30]** 45¹ days after the date the out-of-State business
43 enters this State, provide a written statement to the director
44 indicating that the out-of-State business is doing business in this
45 State for purposes of ¹**[**responding to the declared disaster or
46 emergency **]** performing disaster or emergency related work¹, which
47 written statement shall include the name of the business, the state of

1 the business's domicile, the principal address of the business, the
2 business's federal tax identification number, the date of the
3 business's entry into this State, and the business's contact
4 information.

5 b. A business that is registered to do business in this State shall
6 provide a written statement that includes the information required to
7 be provided to the director in accordance with subsection a. of this
8 section for each out-of-State business affiliate that enters this State
9 for purposes of ¹**【responding to the declared disaster or emergency】**
10 performing disaster or emergency related work¹. The written
11 notification provided to the director also shall include contact
12 information for the business that is registered to do business in this
13 State, and shall be provided to the director by the business that is
14 registered to do business in this State not later than 30 days after the
15 date the out-of-State business enters this State.

16 c. The written statement and any information required to be
17 provided to the director by an out-of-State business or by a business
18 that is registered to do business in this State, on behalf of an
19 affiliate, shall be a public or government record for purposes of
20 P.L.1963, c.73 (C.47:1A-1 et seq.) and P.L.2001, c.404 (C.47:1A-
21 5 et al.), and shall be open to the public for inspection. The written
22 statement and any information required to be provided to the
23 director shall not be a confidential or privileged record or file of the
24 director subject to the provisions of R.S.54:50-8 and R.S.54:50-9.

25
26 6. An out-of-State business or an out-of-State employee that
27 maintains a physical presence in this State or engages in business
28 activity in this State after the disaster period shall comply with all
29 State and local business registration requirements and all licensing
30 and filing requirements ensuing as a result of establishing the
31 required business presence or residency in this State.

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

45
46 8. This act shall take effect immediately.

S2518 [2R]

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6

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.

SENATE, No. 2518

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED MAY 10, 2018

Sponsored by:

Senator JOSEPH P. CRYAN

District 20 (Union)

Co-Sponsored by:

Senator Oroho

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 introduced.



(Sponsorship Updated As Of: 10/23/2018)

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

6
7 **BE IT ENACTED** by the Senate and General Assembly of the State
8 of New Jersey:

9
10 1. As used in P.L. , c. (C.) (pending before the
11 Legislature as this bill):

12 “Declared disaster or emergency” means a disaster or emergency
13 event for which a Governor’s State of Emergency Proclamation is
14 issued or for which a Presidential Declaration of a Major Disaster
15 or Emergency is issued;

16 “Director” means the Director of the Division of Taxation in the
17 Department of the Treasury;

18 “Disaster or emergency related work” means repairing,
19 renovating, installing, building, rendering services, or other
20 business activities that relate to infrastructure damaged, impaired,
21 or destroyed by the declared disaster or emergency;

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

26 “Infrastructure” means property and equipment owned or used
27 by communication networks, electric generation, transmission, and
28 distribution systems, gas distribution systems, water pipelines, and
29 public roads and bridges and related support facilities that service
30 multiple customers and residents including, but not limited to, real
31 and personal property such as buildings, offices, lines, poles, pipes,
32 structures, and equipment;

33 “Out-of-State business” means a business entity that does not
34 have a physical presence in this State and does not otherwise
35 engage in business activity or do business in this State, but whose
36 services are requested by a business that is registered to do business
37 in this State or by a State or local government for purposes of
38 performing disaster or emergency related in this State, provided that
39 an out-of-State business also includes a business entity that is
40 affiliated with the business that is registered to do business in this
41 State solely through common ownership and provided further that
42 the out-of-State business does not have a physical presence in this
43 State, does not engage in activities in this State, is not doing
44 business in this State, and does not have registration or tax filing
45 obligations in this State prior to the declared disaster or emergency;
46 and

1 “Out-of-State employee” means an employee who does not work
2 in this State, except for disaster or emergency related work during
3 the disaster period.

4
5 2. a. An out-of-State business that conducts operations within
6 this State for purposes of performing work or rendering services
7 related to a declared disaster or emergency during the disaster
8 period shall not be considered to have established a level of
9 physical presence or engaged in business activities at a level that is
10 sufficient to require that out-of-State business to register, file, and
11 report and pay State or local taxes or fees or to require that out-of-
12 State business, or its out-of-State employees, to be subject to any
13 State or local licensing or registration requirements. This includes
14 all State and local business licensing and registration requirements
15 and all State and local taxes and fees including, but not limited to,
16 unemployment insurance, sales and use tax, and any ad valorem tax
17 on equipment used or consumed during the disaster period. For
18 purposes of a State or local tax imposed on or measured by net or
19 gross income or receipts, all activity of the out-of-State business
20 conducted in this State, in accordance with P.L. , c. (C.)
21 (pending before the Legislature as this bill), shall be disregarded for
22 any filing requirements for that tax, including the filing required for
23 a unitary or combined group of which the out-of-State business may
24 be a part.

25 b. An out-of-State employee shall not be considered to have
26 established residency or a physical presence or engaged in business
27 activities in this State that are sufficient to require that out-of-State
28 employee or that out-of-State employee’s employer to report and
29 pay State or local income taxes, to be subjected to State or local tax
30 withholdings, or to report and pay any other State or local tax or fee
31 during the disaster period. This includes any related employer
32 withholding and reporting and payment obligations imposed by the
33 State or a local government.

34
35 3. An out-of-State business or out-of-State employee shall be
36 required to pay State and local transaction taxes and fees including,
37 but not limited to, fuel taxes, sales and use taxes on receipts from
38 sales of goods and services subject to sales and use taxes, hotel and
39 motel occupancy taxes and fees, and motor vehicle rental taxes and
40 fees that the out-of-State business or the out-of-State employee
41 purchases for use or consumption in this State during the disaster
42 period, unless those transactions are exempt, excluded, or not
43 subject to State or local tax or fee during the disaster period.

44
45 4. An out-of-State business or out-of-State employee remaining
46 in this State after the disaster period shall be subject to the State’s
47 normal standards for establishing physical presence or residency,
48 engaging in business activity, and doing business in this State, and

1 shall be responsible for any ensuing State or local tax liabilities or
2 requirements of the business or an employee of the business.

3
4 5. a. An out-of-State business that enters this State shall, not
5 later than 30 days after the date the out-of-State business enters this
6 State, provide a written statement to the director indicating that the
7 out-of-State business is doing business in this State for purposes of
8 responding to the declared disaster or emergency, which written
9 statement shall include the name of the business, the state of the
10 business's domicile, the principal address of the business, the
11 business's federal tax identification number, the date of the
12 business's entry into this State, and the business's contact
13 information.

14 b. A business that is registered to do business in this State shall
15 provide a written statement that includes the information required to
16 be provided to the director in accordance with subsection a. of this
17 section for each out-of-State business affiliate that enters this State
18 for purposes of responding to the declared disaster or emergency.
19 The written notification provided to the director also shall include
20 contact information for the business that is registered to do business
21 in this State, and shall be provided to the director by the business
22 that is registered to do business in this State not later than 30 days
23 after the date the out-of-State business enters this State.

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

33
34 6. An out-of-State business or an out-of-State employee that
35 maintains a physical presence in this State or engages in business
36 activity in this State after the disaster period shall comply with all
37 State and local business registration requirements and all licensing
38 and filing requirements ensuing as a result of establishing the
39 required business presence or residency in this State.

40
41 7. Notwithstanding the provisions of the "Administrative
42 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the
43 contrary, the director may adopt immediately upon filing with the
44 Office of Administrative Law such rules and regulations as the
45 director determines to be necessary and appropriate to effectuate the
46 purposes of P.L. , c. (C.) (pending before the Legislature as
47 this bill), which rules and regulations shall be effective for a period
48 not to exceed 360 days following the effective date of P.L. ,

1 c. (C.) (pending before the Legislature as this bill) and may
2 thereafter be amended, adopted, or readopted by the director in
3 accordance with the requirements of P.L.1968, c.410 (C.52:14B-1
4 et seq.).

5
6 8. This act shall take effect immediately.

7
8
9 STATEMENT

10
11 This bill excludes certain out-of-State businesses and employees
12 from certain State and local taxes, fees, and business registration
13 requirements ordinarily imposed on in-State businesses when
14 temporarily performing work or services within this State during a
15 declared disaster or emergency.

16 The bill provides that an out-of-State business that conducts
17 operations within this State for purposes of performing work or
18 rendering services related to a declared disaster or emergency
19 during a disaster period will not be considered to have established a
20 level of physical presence or engaged in business activities at a
21 level that is sufficient to require that out-of-State business to
22 register, file, and report and pay State or local taxes or fees or to
23 require that out-of-State business, or its out-of-State employees, to
24 be subject to any State or local licensing or registration
25 requirements.

26 In addition, the bill provides that an out-of-State employee shall
27 not be considered to have established residency or a physical
28 presence or engaged in business activities in this State that are
29 sufficient to require that out-of-State employee or that out-of-State
30 employee's employer to report and pay State or local income taxes,
31 to be subjected to State or local tax withholdings, or to report and
32 pay any other State or local tax or fee during the disaster period.

33 The bill requires out-of-State businesses and employees to pay
34 State and local transaction taxes and fees that the out-of-State
35 business or out-of-State employee purchases for use or consumption
36 in this State during the disaster period, unless those transactions are
37 otherwise exempt, excluded, or not subject to tax or fee during a
38 disaster period. Under the bill, transaction taxes and fees include,
39 but are not limited to, fuel taxes, sales and use taxes on goods and
40 services subject to taxation, hotel and motel occupancy taxes and
41 fees, and motor vehicle rental taxes and fees.

42 The bill stipulates that an out-of-State business or employee
43 remaining in this State after the disaster period will be subject to the
44 State's normal standards for establishing physical presence or
45 residency, engaging in business activity, and doing business in this
46 State, and will be responsible for any ensuing State or local tax
47 liabilities or requirements of the business or an employee of the
48 business.

1 The bill requires an out-of-State business that enters this State to
2 provide, not later than 30 days after the date the out-of-State
3 business enters this State, a written statement to the director
4 indicating that the out-of-State business is doing business in this
5 State for purposes of responding to the declared disaster or
6 emergency. The bill specifies that a business registered to do
7 business in this State must provide a written statement that includes
8 the information required to be provided to the director by out-of-
9 State businesses for each out-of-State business affiliate that enters
10 this State for purposes of responding to the declared disaster or
11 emergency.

12 The bill stipulates that an out-of-State business or employee that
13 maintains a physical presence in this State or engages in business
14 activity in this State after a disaster period must comply with all
15 State and local business registration requirements and all licensing
16 and filing requirements ensuing as a result of establishing the
17 required business presence or residency in this State.

18 The bill authorizes the Director of the Division of Taxation in
19 the Department of the Treasury to adopt rules and regulations as the
20 director determines to be necessary and appropriate to effectuate the
21 purposes of the bill, and permits the immediate filing of those
22 regulations with the Office of Administrative Law, effective for a
23 period not to exceed 360 days following the bill's effective date.

24 The bill takes effect immediately upon enactment.

25 The purpose of this bill is to remove existing tax, business
26 registration, and other requirements that impede the efficient
27 deployment of out-of-State infrastructure workers to facilitate the
28 restoration of critical infrastructure and utilities following a
29 declared disaster or emergency in this State.

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 2518

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 6, 2018

The Assembly Budget Committee reports favorably Senate Bill No. 2518 (1R), with committee amendments.

This bill, as amended, excludes certain out-of-State businesses and employees from certain State and local taxes, fees, and business registration requirements ordinarily imposed on in-State businesses when temporarily performing work or services on critical infrastructure within this State during a declared disaster or emergency.

The bill provides that an out-of-State business that conducts operations within this State for purposes of performing work or rendering services related to a declared disaster or emergency during a disaster period will not be considered to have established a level of physical presence or engaged in business activities at a level that is sufficient to require that out-of-State business to register, file, report, and pay State or local taxes or fees that require the filing of a New Jersey tax return or to require that out-of-State business, or its out-of-State employees, to be subject to any State or local licensing or registration requirements. Out-of-State businesses, or their out-of-State employees, are nevertheless required to be properly licensed in their home state.

In addition, the bill provides that an out-of-State employee shall not be considered to have established residency or a physical presence or engaged in business activities in this State that are sufficient to require that out-of-State employee or that out-of-State employee's employer to report and pay State or local income taxes, to be subjected to State or local tax withholdings, or to report and pay other State or local taxes or fees that require the filing of a New Jersey tax return during the disaster period.

The bill requires out-of-State businesses and employees to pay State and local transaction taxes and fees that the out-of-State business or out-of-State employee purchases for use or consumption in this State during the disaster period, unless those transactions are otherwise exempt, excluded, or not subject to tax or fee during a disaster period. Under the bill, transaction taxes and fees include, but are not limited

to, fuel taxes, sales and use taxes on goods and services subject to taxation, hotel and motel occupancy taxes and fees, and motor vehicle rental taxes and fees.

The bill stipulates that an out-of-State business or employee remaining in this State after the disaster period will be subject to the State's normal standards for establishing physical presence or residency, engaging in business activity, and doing business in this State, and will be responsible for any ensuing State or local tax liabilities or requirements of the business or an employee of the business.

The bill requires an out-of-State business that enters this State to provide, not later than 45 days after the date the out-of-State business enters this State, a written statement to the director indicating that the out-of-State business is doing business in this State for purposes of responding to the declared disaster or emergency. The bill specifies that a business registered to do business in this State must provide a written statement that includes the information required to be provided to the Director of the Division of Taxation in the Department of Treasury by out-of-State businesses for each out-of-State business affiliate that enters this State for purposes of responding to the declared disaster or emergency.

The bill stipulates that an out-of-State business or employee that maintains a physical presence in this State or engages in business activity in this State after a disaster period is required to comply with all State and local business registration requirements as well as all licensing and filing requirements ensuing as a result of establishing the required business presence or residency in this State.

As amended and reported, this bill is identical to Assembly Bill No. 3699 (1R), as also amended and reported by the committee.

COMMITTEE AMENDMENTS:

The committee amendments:

(1) provide that the State and local tax exemption afforded by the bill is only applicable to State and local taxes that require the filing of a New Jersey tax return; and

(2) require that out-of-State businesses, or their out-of-State employees, be properly licensed in their home state.

FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates that the enactment of the bill will result in an indeterminate loss of State and local government revenues in years in which a state of disaster or emergency is declared. Data on the total amount of taxes and fees paid to the State and local governments by out-of-State businesses and employees performing disaster- or emergency-related work are not readily available. Accordingly, the OLS cannot quantify the bill's revenue losses.

State and local revenue losses will be driven by: 1) the frequency and duration of disaster periods; and 2) the number of out-of-State businesses and employees performing disaster- or emergency-related work. The revenue losses will be temporally limited because the exclusion under the bill will be in effect only during a disaster period.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 2518

with committee amendments

STATE OF NEW JERSEY

DATED: OCTOBER 22, 2018

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 2518, with committee amendments.

As amended, this bill excludes certain out-of-State businesses and employees from certain State and local taxes, fees, and business registration requirements ordinarily imposed on in-State businesses when temporarily performing work or services on critical infrastructure within this State during a declared disaster or emergency.

The bill provides that an out-of-State business that conducts operations within this State for purposes of performing disaster or emergency related work during a disaster period will not be considered to have established a level of physical presence or engaged in business activities at a level that is sufficient to require that out-of-State business to register, file, report, and pay State or local taxes or fees or to require that out-of-State business, or its out-of-State employees, to be subject to any State or local licensing or registration requirements. A “disaster period” commences 10 days before the first day of the Governor’s State of Emergency Proclamation or a Presidential Declaration of a Major Disaster or Emergency and ends 60 days after the end of the declared disaster or emergency period.

In addition, the bill provides that an out-of-State employee shall not be considered to have established residency or a physical presence or engaged in business activities in this State that are sufficient to require that out-of-State employee or that out-of-State employee’s employer to report and pay State or local income taxes, to be subjected to State or local tax withholdings, or to report and pay any other State or local tax or fee during the disaster period.

The bill requires out-of-State businesses and employees to pay State and local transaction taxes and fees that the out-of-State business or out-of-State employee purchases for use or consumption in this State during the disaster period, unless those transactions are otherwise exempt, excluded, or not subject to tax or fee during a disaster period. Under the bill, transaction taxes and fees include, but are not limited to, fuel taxes, sales and use taxes on goods and services subject to taxation, hotel and motel occupancy taxes and fees, and motor vehicle rental taxes and fees.

The bill stipulates that an out-of-State business or employee remaining in this State after the disaster period will be subject to the State's normal standards for establishing physical presence or residency, engaging in business activity, and doing business in this State, and will be responsible for any ensuing State or local tax liabilities or requirements of the business or an employee of the business.

The bill requires an out-of-State business that enters this State to provide, not later than 45 days after the date the out-of-State business enters this State, a written statement to the Director of the Division of Taxation in the Department of the Treasury (the "director") indicating that the out-of-State business is doing business in this State for purposes of responding to the declared disaster or emergency. The bill specifies that a business registered to do business in this State must provide a written statement that includes the information required to be provided to the director by out-of-State businesses for each out-of-State business affiliate that enters this State for purposes of responding to the declared disaster or emergency.

The bill stipulates that an out-of-State business or employee that maintains a physical presence in this State or engages in business activity in this State after a disaster period must comply with all State and local business registration requirements and all licensing and filing requirements ensuing as a result of establishing the required business presence or residency in this State.

The bill authorizes the director to adopt rules and regulations as the director determines to be necessary and appropriate to effectuate the purposes of the bill, and permits the immediate filing of those regulations with the Office of Administrative Law, effective for a period not to exceed 360 days following the date the bill is enacted into law.

COMMITTEE AMENDMENTS:

The committee amendments:

(1) clarify that the exemption provided by the bill applies only to critical infrastructure projects; "critical infrastructure" does not include roads and bridges;

(2) update the bill's provision relating to combined reporting under the corporation business tax, to ensure that the exemption does not otherwise impact how a non-taxable member is included in a combined group; and

(3) increase the reporting time to 45 days, from 30 days, by an out-of-State business to notify the Director of the Division of Taxation in the Department of the Treasury of doing business in the State for purposes of responding to the declared disaster or emergency.

FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates that the enactment of the bill will result in an indeterminate loss of State and local government revenues in years in which a state of disaster or emergency is declared. Data on the total amount of taxes and fees paid to the State and local governments by out-of-State businesses and employees performing disaster- or emergency-related work are not readily available. Accordingly, the OLS cannot quantify the bill's revenue losses.

State and local revenue losses will be driven by: 1) the frequency and duration of disaster periods; and 2) the number of out-of-State businesses and employees performing disaster- or emergency-related work. The revenue losses will be temporally limited because the exclusion under the bill will be in effect only during a disaster period.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

SENATE, No. 2518 STATE OF NEW JERSEY 218th LEGISLATURE

DATED: NOVEMBER 1, 2018

SUMMARY

- 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.
- Type of Impact:** Intermittent loss of State and local revenues.
- Agencies Affected:** State and local government entities.

Office of Legislative Services Estimate

Fiscal Impact	<u>Annual</u>
State Revenue Loss	Indeterminate
Local Revenue Loss	Indeterminate

- The Office of Legislative Services (OLS) estimates that the enactment of the bill will result in an indeterminate loss of State and local government revenues in years in which a state of disaster or emergency is declared. Data on the total amount of taxes and fees paid to the State and local governments by out-of-State businesses and employees performing disaster- or emergency-related work are not readily available. Accordingly, the OLS cannot quantify the bill's revenue losses.
- State and local revenue losses will be driven by: 1) the frequency and duration of disaster periods; and 2) the number of out-of-State businesses and employees performing disaster- or emergency-related work. The revenue losses will be temporally limited because the exclusion under the bill will be in effect only during a disaster period.

BILL DESCRIPTION

The bill excludes out-of-State businesses and employees from select State and local taxes, fees, and business registration and licensing requirements when temporarily performing work or

services within this State during a disaster period. The out-of-State businesses and employees still have to pay State and local transaction taxes and fees on purchases for their own use, unless those transactions are otherwise not subject to a tax or fee. Transaction taxes and fees include fuel taxes, sales and use taxes, hotel and motel occupancy taxes and fees, and motor vehicle rental taxes and fees.

The bill also requires an out-of-State business to provide, not later than 45 days after the date of entering New Jersey, a written statement to the Division of Taxation indicating that the out-of-State business is temporarily operating in this State for disaster response purposes. An in-State business must provide the written statement for each out-of-State business affiliate that temporarily operates in this State for disaster response purposes.

A disaster period begins 10 days before the first day of the Governor's proclamation of a state of emergency or the issuance of a Presidential Declaration of a Major Disaster or Emergency, whichever occurs first, and ends 60 days after the expiration of the declared disaster or emergency period.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates that the enactment of the bill will result in an indeterminate loss of State and local government revenues in years in which a state of disaster or emergency is declared. Data on the total amount of taxes and fees that are paid to the State and local governments by out-of-State businesses and employees performing disaster- or emergency-related work in this State are not readily available. Accordingly, the OLS cannot quantify the revenue losses that will be attributable to the bill.

State and local revenue losses will be driven by: 1) the frequency and duration of disaster periods; and 2) the number of out-of-State businesses and employees performing disaster- or emergency-related work. Any revenue loss will be temporally limited because the exclusion under the bill will be in effect only during a disaster period, which begins 10 days before the first day of the Governor's proclamation of a state of emergency or the issuance of a Presidential Declaration of a Major Disaster or Emergency, whichever occurs first, and ends 60 days after the expiration of the declared disaster or emergency period.

The State revenue loss will primarily consist of: 1) the nonpayment of business registration fees by out-of-State businesses engaged in disaster- or emergency-related work; and 2) the nonpayment of income and wage taxes by out-of-State businesses and employees that would have been paid absent enactment of the bill. The bulk of the local revenue loss will be borne by municipalities that will not collect permitting and inspection fees associated with infrastructure repair work that otherwise would be paid by out-of-State businesses.

The OLS notes that some disaster- or emergency-related work may already be exempt from certain State taxes. For example, out-of-State utility companies assisted with the restoration of telecommunications and utility services following Superstorm Sandy. Under current law, purchases of utility equipment and certain telecommunication service equipment are exempt

from the sales and use tax. In addition, like other taxpayers, out-of-State residents already do not owe gross income tax when their New Jersey gross income does not exceed \$10,000 for single tax return filers or \$20,000 for married tax return filers.

Section: Revenue, Finance, and Appropriations

*Analyst: Scott A. Brodsky
Lead Fiscal Analyst*

*Approved: Frank W. Haines III
Legislative Budget and Finance Officer*

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

SENATE, No. 2518

STATE OF NEW JERSEY 218th LEGISLATURE

DATED: DECEMBER 19, 2018

SUMMARY

- 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.
- Type of Impact:** Intermittent loss of State and local revenues.
- Agencies Affected:** State and local government entities.

Office of Legislative Services Estimate

Fiscal Impact	<u>Annual</u>
State Revenue Loss	Indeterminate
Local Revenue Loss	Indeterminate

- The Office of Legislative Services (OLS) estimates that the enactment of the bill will result in an indeterminate loss of State and local government revenues in years in which a state of disaster or emergency is declared. Data on the total amount of taxes and fees paid to the State and local governments by out-of-State businesses and employees performing disaster- or emergency-related work are not readily available.
- State and local revenue losses will be driven by: 1) the frequency and duration of disaster periods; and 2) the number of out-of-State businesses and employees performing disaster- or emergency-related work. The revenue losses will be temporally limited because the exclusion under the bill will be in effect only during a disaster period.

BILL DESCRIPTION

The bill excludes out-of-State businesses and employees from select State and local taxes, fees, and business registration and licensing requirements when temporarily performing work or

services within this State during a disaster period. The tax exemption afforded by the bill is only applicable State and local taxes that require the filing of a New Jersey tax return. An out-of-State business, or its out-of-State employees, must be properly licensed in their home state.

Out-of-State businesses and employees still have to pay State and local transaction taxes and fees on purchases for their own use, unless those transactions are otherwise not subject to a tax or fee. Transaction taxes and fees include fuel taxes, sales and use taxes, hotel and motel occupancy taxes and fees, and motor vehicle rental taxes and fees.

The bill also requires an out-of-business to provide, not later than 45 days after the date of entering New Jersey, a written statement to the Division of Taxation indicating that the out-of-State business is temporarily operating in this State for disaster response purposes. An in-State business must provide the written statement for each out-of-State business affiliate that temporarily operates in this State for disaster response purposes.

A disaster period begins 10 days before the first day of the Governor's proclamation of a state of emergency or the issuance of a Presidential Declaration of a Major Disaster or Emergency, whichever occurs first, and ends 60 days after the expiration of the declared disaster or emergency period.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS notes that the enactment of the bill will result in an indeterminate loss of State and local government revenues in years in which a state of disaster or emergency is declared. Data on the total amount of taxes and fees that are paid to the State and local governments by out-of-State businesses and employees performing disaster- or emergency-related work in this State are not readily available. Accordingly the OLS cannot quantify the revenue losses that will be attributable to the bill.

State and local revenue losses will be driven by: 1) the frequency and duration of disaster periods; and 2) the number of out-of-State and employees performing disaster- or emergency-related work. Any revenue loss will be temporally limited because the exclusion under the bill will be in effect only during a disaster period, which begins 10 days before the first day of the Governor's proclamation of a state of emergency or the issuance of a Presidential Declaration of a Major Disaster or Emergency, whichever occurs first, and ends 60 days after the expiration of the declared disaster or emergency period.

The State revenue loss will primarily consist of: 1) the nonpayment of business registration fees by out-of-State businesses engaged in disaster- or emergency-related work; and 2) the nonpayment of income and wage taxes by out-of-State businesses and employees that would have been paid absent enactment of the bill. The bulk of the local revenue loss would be borne by municipalities that will not collect permitting and inspection fees associated with infrastructure repair work that would otherwise be paid by out-of-State businesses.

The OLS notes that some disaster- or emergency-related work may already be exempt from certain State taxes. For example, out-of-State utility companies assisted with the restoration of telecommunications and utility services following Superstorm Sandy. Under current law,

purchases of utility equipment and certain telecommunication service equipment are exempt from the sales and use tax. In addition, like other taxpayers, out-of-State residents that already do not owe gross income tax when their New Jersey gross income does not exceed \$10,000 for single tax return filers or \$20,000 for married tax return filers.

Section: Revenue, Finance, and Appropriations

*Analyst: Scott A. Brodsky
Lead Fiscal Analyst*

*Approved: Frank W. Haines III
Legislative Budget and Finance Officer*

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

ASSEMBLY, No. 3699

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED MARCH 22, 2018

Sponsored by:

**Assemblywoman ANNETTE QUIJANO
District 20 (Union)**

Co-Sponsored by:

Assemblyman S.Kean

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 introduced.



(Sponsorship Updated As Of: 6/26/2018)

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

6
7 **BE IT ENACTED** by the Senate and General Assembly of the State
8 of New Jersey:

9
10 1. As used in P.L. , c. (C.) (pending before the
11 Legislature as this bill):

12 “Declared disaster or emergency” means a disaster or emergency
13 event for which a Governor’s State of Emergency Proclamation is
14 issued or for which a Presidential Declaration of a Major Disaster
15 or Emergency is issued;

16 “Director” means the Director of the Division of Taxation in the
17 Department of the Treasury;

18 “Disaster or emergency related work” means repairing,
19 renovating, installing, building, rendering services, or other
20 business activities that relate to infrastructure damaged, impaired,
21 or destroyed by the declared disaster or emergency;

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

26 “Infrastructure” means property and equipment owned or used
27 by communication networks, electric generation, transmission, and
28 distribution systems, gas distribution systems, water pipelines, and
29 public roads and bridges and related support facilities that service
30 multiple customers and residents including, but not limited to, real
31 and personal property such as buildings, offices, lines, poles, pipes,
32 structures, and equipment;

33 “Out-of-State business” means a business entity that does not
34 have a physical presence in this State and does not otherwise
35 engage in business activity or do business in this State, but whose
36 services are requested by a business that is registered to do business
37 in this State or by a State or local government for purposes of
38 performing disaster or emergency related in this State, provided that
39 an out-of-State business also includes a business entity that is
40 affiliated with the business that is registered to do business in this
41 State solely through common ownership and provided further that
42 the out-of-State business does not have a physical presence in this
43 State, does not engage in activities in this State, is not doing
44 business in this State, and does not have registration or tax filing
45 obligations in this State prior to the declared disaster or emergency;
46 and

47 “Out-of-State employee” means an employee who does not work
48 in this State, except for disaster or emergency related work during
49 the disaster period.

1 2. a. An out-of-State business that conducts operations within
2 this State for purposes of performing work or rendering services
3 related to a declared disaster or emergency during the disaster
4 period shall not be considered to have established a level of
5 physical presence or engaged in business activities at a level that is
6 sufficient to require that out-of-State business to register, file, and
7 report and pay State or local taxes or fees or to require that out-of-
8 State business, or its out-of-State employees, to be subject to any
9 State or local licensing or registration requirements. This includes
10 all State and local business licensing and registration requirements
11 and all State and local taxes and fees including, but not limited to,
12 unemployment insurance, sales and use tax, and any ad valorem tax
13 on equipment used or consumed during the disaster period. For
14 purposes of a State or local tax imposed on or measured by net or
15 gross income or receipts, all activity of the out-of-State business
16 conducted in this State, in accordance with P.L. , c. (C.)
17 (pending before the Legislature as this bill), shall be disregarded for
18 any filing requirements for that tax, including the filing required for
19 a unitary or combined group of which the out-of-State business may
20 be a part.

21 b. An out-of-State employee shall not be considered to have
22 established residency or a physical presence or engaged in business
23 activities in this State that are sufficient to require that out-of-State
24 employee or that out-of-State employee's employer to report and
25 pay State or local income taxes, to be subjected to State or local tax
26 withholdings, or to report and pay any other State or local tax or fee
27 during the disaster period. This includes any related employer
28 withholding and reporting and payment obligations imposed by the
29 State or a local government.

30
31 3. An out-of-State business or out-of-State employee shall be
32 required to pay State and local transaction taxes and fees including,
33 but not limited to, fuel taxes, sales and use taxes on receipts from
34 sales of goods and services subject to sales and use taxes, hotel and
35 motel occupancy taxes and fees, and motor vehicle rental taxes and
36 fees that the out-of-State business or the out-of-State employee
37 purchases for use or consumption in this State during the disaster
38 period, unless those transactions are exempt, excluded, or not
39 subject to State or local tax or fee during the disaster period.

40
41 4. An out-of-State business or out-of-State employee remaining
42 in this State after the disaster period shall be subject to the State's
43 normal standards for establishing physical presence or residency,
44 engaging in business activity, and doing business in this State, and
45 shall be responsible for any ensuing State or local tax liabilities or
46 requirements of the business or an employee of the business.

47
48 5. a. An out-of-State business that enters this State shall, not
49 later than 30 days after the date the out-of-State business enters this

1 State, provide a written statement to the director indicating that the
2 out-of-State business is doing business in this State for purposes of
3 responding to the declared disaster or emergency, which written
4 statement shall include the name of the business, the state of the
5 business's domicile, the principal address of the business, the
6 business's federal tax identification number, the date of the
7 business's entry into this State, and the business's contact
8 information.

9 b. A business that is registered to do business in this State shall
10 provide a written statement that includes the information required to
11 be provided to the director in accordance with subsection a. of this
12 section for each out-of-State business affiliate that enters this State
13 for purposes of responding to the declared disaster or emergency.
14 The written notification provided to the director also shall include
15 contact information for the business that is registered to do business
16 in this State, and shall be provided to the director by the business
17 that is registered to do business in this State not later than 30 days
18 after the date the out-of-State business enters this State.

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

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29 6. An out-of-State business or an out-of-State employee that
30 maintains a physical presence in this State or engages in business
31 activity in this State after the disaster period shall comply with all
32 State and local business registration requirements and all licensing
33 and filing requirements ensuing as a result of establishing the
34 required business presence or residency in this State.

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36 7. Notwithstanding the provisions of the "Administrative
37 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the
38 contrary, the director may adopt immediately upon filing with the
39 Office of Administrative Law such rules and regulations as the
40 director determines to be necessary and appropriate to effectuate the
41 purposes of P.L. , c. (C.) (pending before the Legislature as
42 this bill), which rules and regulations shall be effective for a period
43 not to exceed 360 days following the effective date of P.L. , c.
44 (C.) (pending before the Legislature as this bill) and may
45 thereafter be amended, adopted, or readopted by the director in
46 accordance with the requirements of P.L.1968, c.410 (C.52:14B-1
47 et seq.).

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49 8. This act shall take effect immediately.

STATEMENT

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This bill excludes certain out-of-State businesses and employees from certain State and local taxes, fees, and business registration requirements ordinarily imposed on in-State businesses when temporarily performing work or services within this State during a declared disaster or emergency.

The bill provides that an out-of-State business that conducts operations within this State for purposes of performing work or rendering services related to a declared disaster or emergency during a disaster period will not be considered to have established a level of physical presence or engaged in business activities at a level that is sufficient to require that out-of-State business to register, file, and report and pay State or local taxes or fees or to require that out-of-State business, or its out-of-State employees, to be subject to any State or local licensing or registration requirements.

In addition, the bill provides that an out-of-State employee shall not be considered to have established residency or a physical presence or engaged in business activities in this State that are sufficient to require that out-of-State employee or that out-of-State employee's employer to report and pay State or local income taxes, to be subjected to State or local tax withholdings, or to report and pay any other State or local tax or fee during the disaster period.

The bill requires out-of-State businesses and employees to pay State and local transaction taxes and fees that the out-of-State business or out-of-State employee purchases for use or consumption in this State during the disaster period, unless those transactions are otherwise exempt, excluded, or not subject to tax or fee during a disaster period. Under the bill, transaction taxes and fees include, but are not limited to, fuel taxes, sales and use taxes on goods and services subject to taxation, hotel and motel occupancy taxes and fees, and motor vehicle rental taxes and fees.

The bill stipulates that an out-of-State business or employee remaining in this State after the disaster period will be subject to the State's normal standards for establishing physical presence or residency, engaging in business activity, and doing business in this State, and will be responsible for any ensuing State or local tax liabilities or requirements of the business or an employee of the business.

The bill requires an out-of-State business that enters this State to provide, not later than 30 days after the date the out-of-State business enters this State, a written statement to the director indicating that the out-of-State business is doing business in this State for purposes of responding to the declared disaster or emergency. The bill specifies that a business registered to do business in this State must provide a written statement that includes the information required to be provided to the director by out-of-State businesses for each out-of-State business affiliate that enters

1 this State for purposes of responding to the declared disaster or
2 emergency.

3 The bill stipulates that an out-of-State business or employee that
4 maintains a physical presence in this State or engages in business
5 activity in this State after a disaster period must comply with all
6 State and local business registration requirements and all licensing
7 and filing requirements ensuing as a result of establishing the
8 required business presence or residency in this State.

9 The bill authorizes the Director of the Division of Taxation in
10 the Department of the Treasury to adopt rules and regulations as the
11 director determines to be necessary and appropriate to effectuate the
12 purposes of the bill, and permits the immediate filing of those
13 regulations with the Office of Administrative Law, effective for a
14 period not to exceed 360 days following the bill's effective date.

15 The bill takes effect immediately upon enactment.

16 The purpose of this bill is to remove existing tax, business
17 registration, and other requirements that impede the efficient
18 deployment of out-of-State infrastructure workers to facilitate the
19 restoration of critical infrastructure and utilities following a
20 declared disaster or emergency in this State.

ASSEMBLY HOMELAND SECURITY AND STATE
PREPAREDNESS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3699

with committee amendments

STATE OF NEW JERSEY

DATED: OCTOBER 18, 2018

The Assembly Homeland Security and State Preparedness Committee reports favorably and with committee amendments Assembly Bill No. 3699.

As amended and reported by the committee, Assembly Bill No. 3699 excludes certain out-of-State businesses and employees from certain State and local taxes, fees, and business registration requirements ordinarily imposed on in-State businesses when temporarily performing work or services on critical infrastructure within this State during a declared disaster or emergency.

The amended bill provides that an out-of-State business that conducts operations within this State for purposes of performing work or rendering services related to a declared disaster or emergency during a disaster period will not be considered to have established a level of physical presence or engaged in business activities at a level that is sufficient to require that out-of-State business to register, file, report, and pay State or local taxes or fees or to require that out-of-State business, or its out-of-State employees, to be subject to any State or local licensing or registration requirements.

In addition, the bill, as amended, provides that an out-of-State employee shall not be considered to have established residency or a physical presence or engaged in business activities in this State that are sufficient to require that out-of-State employee or that out-of-State employee's employer to report and pay State or local income taxes, to be subjected to State or local tax withholdings, or to report and pay any other State or local tax or fee during the disaster period.

The amended bill requires out-of-State businesses and employees to pay State and local transaction taxes and fees that the out-of-State business or out-of-State employee purchases for use or consumption in this State during the disaster period, unless those transactions are otherwise exempt, excluded, or not subject to tax or fee during a disaster period. Under the bill, transaction taxes and fees include, but are not limited to, fuel taxes, sales and use taxes on goods and services subject to taxation, hotel and motel occupancy taxes and fees, and motor vehicle rental taxes and fees.

The amended bill stipulates that an out-of-State business or employee remaining in this State after the disaster period will be subject to the State's normal standards for establishing physical presence or residency, engaging in business activity, and doing business in this State, and will be responsible for any ensuing State or local tax liabilities or requirements of the business or an employee of the business.

The bill, as amended, requires an out-of-State business that enters this State to provide, not later than 45 days after the date the out-of-State business enters this State, a written statement to the director indicating that the out-of-State business is doing business in this State for purposes of responding to the declared disaster or emergency. The bill specifies that a business registered to do business in this State must provide a written statement that includes the information required to be provided to the Director of the Division of Taxation in the Department of Treasury by out-of-State businesses for each out-of-State business affiliate that enters this State for purposes of responding to the declared disaster or emergency.

The amended bill stipulates that an out-of-State business or employee that maintains a physical presence in this State or engages in business activity in this State after a disaster period is required to comply with all State and local business registration requirements as well as all licensing and filing requirements ensuing as a result of establishing the required business presence or residency in this State. In addition, the amended bill authorizes the director to adopt rules and regulations as the director determines to be necessary and appropriate to effectuate the purposes of the bill, and permits the immediate filing of those regulations with the Office of Administrative Law, effective for a period not to exceed 360 days following the bill's effective date.

The bill takes effect immediately upon enactment.

According to the sponsor, the purpose of this bill is to remove existing tax, business registration, and other requirements that impede the efficient deployment of out-of-State infrastructure workers to facilitate the restoration of critical infrastructure and utilities following a declared disaster or emergency in this State.

COMMITTEE AMENDMENTS

The committee amendments clarify that the provisions of the bill are related to critical infrastructure and do not relate to repairing of non-critical infrastructure. The definition of critical infrastructure is amended to remove roads and bridges as is comparable to other states enacting similar legislation.

The committee amendments also update the language relating to corporate business taxes to reflect the recent enactment of mandatory unitary combined filing. The amendments make clear that the disaster related activity does not impact how a non-taxable member is included in the combined group.

Finally, the committee amendments increase the reporting time to 45 days, from 30 days, by an out-of-State business to notify the Director of the Division of Taxation in the Department of the Treasury of doing business in the State for purposes of responding to the declared disaster or emergency.

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 3699

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 6, 2018

The Assembly Budget Committee reports favorably Assembly Bill No. 3699 (1R), with committee amendments.

This bill, as amended, excludes certain out-of-State businesses and employees from certain State and local taxes, fees, and business registration requirements ordinarily imposed on in-State businesses when temporarily performing work or services on critical infrastructure within this State during a declared disaster or emergency.

The bill provides that an out-of-State business that conducts operations within this State for purposes of performing work or rendering services related to a declared disaster or emergency during a disaster period will not be considered to have established a level of physical presence or engaged in business activities at a level that is sufficient to require that out-of-State business to register, file, report, and pay State or local taxes or fees that require the filing of a New Jersey tax return or to require that out-of-State business, or its out-of-State employees, to be subject to any State or local licensing or registration requirements. Out-of-State businesses, or their out-of-State employees, are nevertheless required to be properly licensed in their home state.

In addition, the bill provides that an out-of-State employee shall not be considered to have established residency or a physical presence or engaged in business activities in this State that are sufficient to require that out-of-State employee or that out-of-State employee's employer to report and pay State or local income taxes, to be subjected to State or local tax withholdings, or to report and pay other State or local taxes or fees that require the filing of a New Jersey tax return during the disaster period.

The bill requires out-of-State businesses and employees to pay State and local transaction taxes and fees that the out-of-State business or out-of-State employee purchases for use or consumption in this State during the disaster period, unless those transactions are otherwise exempt, excluded, or not subject to tax or fee during a disaster period. Under the bill, transaction taxes and fees include, but are not limited

to, fuel taxes, sales and use taxes on goods and services subject to taxation, hotel and motel occupancy taxes and fees, and motor vehicle rental taxes and fees.

The bill stipulates that an out-of-State business or employee remaining in this State after the disaster period will be subject to the State's normal standards for establishing physical presence or residency, engaging in business activity, and doing business in this State, and will be responsible for any ensuing State or local tax liabilities or requirements of the business or an employee of the business.

The bill requires an out-of-State business that enters this State to provide, not later than 45 days after the date the out-of-State business enters this State, a written statement to the director indicating that the out-of-State business is doing business in this State for purposes of responding to the declared disaster or emergency. The bill specifies that a business registered to do business in this State must provide a written statement that includes the information required to be provided to the Director of the Division of Taxation in the Department of Treasury by out-of-State businesses for each out-of-State business affiliate that enters this State for purposes of responding to the declared disaster or emergency.

The bill stipulates that an out-of-State business or employee that maintains a physical presence in this State or engages in business activity in this State after a disaster period is required to comply with all State and local business registration requirements as well as all licensing and filing requirements ensuing as a result of establishing the required business presence or residency in this State.

As amended and reported, this bill is identical to Senate Bill No. 2518 (1R), as also amended and reported by the committee.

COMMITTEE AMENDMENTS:

The committee amendments:

(1) provide that the State and local tax exemption afforded by the bill is only applicable to State and local taxes that require the filing of a New Jersey tax return; and

(2) require that out-of-State businesses, or their out-of-State employees, be properly licensed in their home state.

FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates that the enactment of the bill will result in an indeterminate loss of State and local government revenues in years in which a state of disaster or emergency is declared. Data on the total amount of taxes and fees paid to the State and local governments by out-of-State businesses and employees performing disaster- or emergency-related work are not readily available. Accordingly, the OLS cannot quantify the bill's revenue losses.

State and local revenue losses will be driven by: 1) the frequency and duration of disaster periods; and 2) the number of out-of-State businesses and employees performing disaster- or emergency-related work. The revenue losses will be temporally limited because the exclusion under the bill will be in effect only during a disaster period.

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

ASSEMBLY, No. 3699

STATE OF NEW JERSEY 218th LEGISLATURE

DATED: DECEMBER 19, 2018

SUMMARY

- Synopsis:** Excludes out-of-State businesses and employees from certain taxes, fees, and business registration requirements when temporarily perform in-State work or services during declared disaster or emergency.
- Type of Impact:** Intermittent loss of State and local revenues.
- Agencies Affected:** State and local Government entities.

Office of Legislative Services Estimate

Fiscal Impact	Annual
State Revenue Loss	Indeterminate
Local Revenue Loss	Indeterminate

- The Office of Legislative Services (OLS) estimates that the enactment of the bill will result in an indeterminate loss of State and local government revenues in years in which a state of emergency or disaster is declared. Data on the total amount of taxes and fees paid to the State and local governments by out-of-state businesses and employees performing disaster-related or emergency-related work are not readily available. Accordingly, the OLS cannot quantify the bill's revenue losses.
- State and local revenue losses will be driven by: 1) the frequency and duration of disaster periods; and 2) the number of out-of-State businesses and employees performing disaster- or emergency-related work. The revenue losses will be temporally limited because the exclusion under the bill will be in effect only during a disaster period.

BILL DESCRIPTION

The bill excludes out-of-State businesses and employees from select State and local taxes, fees, and business registration and licensing requirements when temporarily performing work or

services within this State during a disaster period. The tax exemption afforded by the bill is only applicable State and local taxes that require the filing of a New Jersey tax return. An out-of-State business, or its out-of-State employees, must be properly licensed in their home state.

Out-of-State businesses and employees still have to pay State and local transaction taxes and fees on purchases for their own use, unless those transactions are otherwise not subject to a tax or fee. Transaction taxes and fees include fuel taxes, sales and use taxes, hotel and motel occupancy taxes and fees, and motor vehicle rental taxes and fees.

The bill also requires an out-of-business to provide, not later than 45 days after the date of entering New Jersey, a written statement to the Division of Taxation indicating that the out-of-State business is temporarily operating in this State for disaster response purposes. An in-State business must provide the written statement for each out-of-State business affiliate that temporarily operates in this State for disaster response purposes.

A disaster period begins 10 days before the first day of the Governor's proclamation of a state of emergency or the issuance of a Presidential Declaration of a Major Disaster or Emergency, whichever occurs first, and ends 60 days after the expiration of the declared disaster or emergency period.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS notes that the enactment of the bill will result in an indeterminate loss of State and local government revenues in years in which a state of disaster or emergency is declared. Data on the total amount of taxes and fees that are paid to the State and local governments by out-of-State businesses and employees performing disaster- or emergency-related work in this State are not readily available. Accordingly the OLS cannot quantify the revenue losses that will be attributable to the bill.

State and local revenue losses will be driven by: 1) the frequency and duration of disaster periods; and 2) the number of out-of-State and employees performing disaster- or emergency-related work. Any revenue loss will be temporally limited because the exclusion under the bill will be in effect only during a disaster period, which begins 10 days before the first day of the Governor's proclamation of a state of emergency or the issuance of a Presidential Declaration of a Major Disaster or Emergency, whichever occurs first, and ends 60 days after the expiration of the declared disaster or emergency period.

The State revenue loss will primarily consist of: 1) the nonpayment of business registration fees by out-of-State businesses engaged in disaster- or emergency-related work; and 2) the nonpayment of income and wage taxes by out-of-State businesses and employees that would have been paid absent enactment of the bill. The bulk of the local revenue loss would be borne by municipalities that will not collect permitting and inspection fees associated with infrastructure repair work that would otherwise be paid by out-of-State businesses.

The OLS notes that some disaster- or emergency-related work may already be exempt from certain State taxes. For example, out-of-State utility companies assisted with the restoration of telecommunications and utility services following Superstorm Sandy. Under current law,

purchases of utility equipment and certain telecommunication service equipment are exempt from the sales and use tax. In addition, like other taxpayers, out-of-State residents that already do not owe gross income tax when their New Jersey gross income does not exceed \$10,000 for single tax return filers or \$20,000 for married tax return filers.

Section: Revenue, Finance, and Appropriations

*Analyst: Scott A. Brodsky
Lead Fiscal Analyst*

*Approved: Frank W. Haines III
Legislative Budget and Finance Officer*

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).



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Newark, N.J.

Governor Murphy Takes Action on Legislation

01/31/2019

TRENTON – Today, Governor Phil Murphy signed the following bills into law:

A2164 (Wimberly, Schaer, Lampitt/Cruz-Perez, Beach) – “Healthy Small Food Retailer Act.”

[Copy of Statement on A2164](#)

A2190 (Lampitt, Downey, Thomson/Ruiz, Cunningham) – Requires school districts to incorporate instruction in grades six through 12 on law and meaning of consent for physical contact and sexual activity as part of Student Learning Standards in Comprehensive Health and Physical Education.

A2436 (Benson, Swain, Tully/Bucco, Lagana) – Requires certain school district transportation supervisors to complete educational program.

A2442 (Benson, Rooney, Downey/Singer, Gopal) – Establishes reciprocity requirements for out-of-State certified nurse aides to practice in New Jersey.

A2732 (Andrzejczak, Dancer/Van Drew) – Clarifies that use of propane-powered noise making device is allowed as non-lethal method of wildlife control on farmland.

A3443 (Schaer, DeCroce, Calabrese/Sarlo) – Concerns licensure of persons possessing barbering license in another state or foreign country.

A3666 (DeAngelo, Houghtaling/Madden, Lagana, Addiego, Vitale) – Requires public works contractors to have certain certifications; requires certain contractors to participate in apprenticeship program.

A3772 (DeAngelo, Quijano/Beach) – Provides for licensing of pool and spa service contractors, and pool and spa builders and installers.

A4191 (Andrzejczak, Land/Van Drew, Holzapfel) – Revises requirements for swimming pools to comply with certain regulations concerning lifeguards, inspections, and circulation systems.

[Copy of Statement on A4191](#)

A4224 (Tully, Swain, Benson/Lagana, Greenstein) – Requires study of safety of school bus passengers in certain emergency situations, including school bus accidents; appropriates \$250,000.

A4299 (Benson, DeAngelo/Greenstein, Turner) – Designates portion of Interstate Highway Route 195 in Mercer County as "Francis J. McManimon Highway."

A4579 (Lopez, Pinkin/Sweeney, Oroho) – Appropriates \$28,883,557 in 2003 and 1992 bond act monies for loans for dam restoration and repair projects and inland waters projects.

A4733 (Taliaferro, Houghtaling, Downey/Gopal, Cruz-Perez) – Appropriates \$15,000,000 from constitutionally dedicated CBT revenues to State Agriculture Development Committee for municipal planning incentive grants for farmland preservation purposes.

A4735 (Houghtaling, Verrelli, Taliaferro/Cruz-Perez, Gopal) – Appropriates \$1,591,000 from constitutionally dedicated CBT revenues to State Agriculture Development Committee for grants to certain nonprofit organizations for farmland preservation purposes.

A4736 (Armato, Freiman, Murphy/Oroho, Gopal) – Appropriates \$8,896,229 to State Agriculture Development Committee for farmland preservation purposes.

A4748 (Pintor Marin, Chiaravalloti, Quijano/Greenstein, Bateman) – Authorizes NJ Infrastructure Bank to expend additional sums to make loans for environmental infrastructure projects for FY2019.

A4751 (Freiman, Tully, Murphy/Codey, Bateman) – Appropriates \$15.696 million from constitutionally dedicated CBT revenues to DEP for State acquisition of lands for recreation and conservation purposes, including Blue Acres projects.

S374 (Rice, Singleton/McKeon, Karabinchak, Quijano, Danielsen, Downey, Murphy) – Requires Director of Division of Investment to attempt to use qualified minority and women-owned financial institutions to provide brokerage and investment management services.

[Copy of Statement on S374](#)

S466 (Singer, Addiego/Benson, Coughlin, McKeon) – Requires acceptance of universal dentist application for participation form by dental plan carriers.

S679 (Bateman, Smith/DeAngelo, Mukherji, Danielsen) – Increases civil penalties for certain natural gas or hazardous liquid facility safety violations.

S1484 (Singleton/Murphy, Conaway, Benson) – "Antwan's Law"; reduces speed limit on Route 130 near Burlington City High School and Wilbur Watts Intermediate School.

S1569 (Weinberg, Ruiz/Gusciora, Eustace, Vainieri-Huttle, Jasey, Downey) – Requires boards of education to include instruction, and adopt instructional materials, that accurately portray political, economic, and social contributions of persons with disabilities and lesbian, gay, bisexual, and transgender people.

S2518 (Cryan/Quijano, Vainieri-Huttle, Wimberly) – 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.

S2665 (Pou, Cruz-Perez/Mukherji, Moriarty, Quijano) – Prohibits use of misleading website to sell event tickets.

S2914 (Lagana, Corrado/Tully, Swain, Downey) – Requires suspension of school bus endorsement on driver's license for certain number of motor vehicle moving violations in certain time period.

S2962 (Pou/Giblin) – Revises "Accountancy Act of 1997."

S2969 (Lagana, Singleton/Mazzeo) – Modifies responsibilities of fantasy sports operators concerning participant funds.

S3186 (Codey/Mukherji, McKnight, Schaer) – Amends list of environmental infrastructure projects approved for long-term funding for FY2019 to include new projects and remove certain projects.

S3209 (Greenstein, Bateman/Pinkin, Burzichelli, Mukherji) – Appropriates \$2.94 million from constitutionally dedicated CBT revenues for recreation and conservation purposes to DEP for State capital and park development

projects.

S3247 (Van Drew/Pintor Marin) – Authorizes State Treasurer to convey surplus real property known as Learning Center in City of Vineland, County of Cumberland.

Additionally, Governor Murphy announced that he has conditionally vetoed the following bills:

A557 (Moriarty, Caputo, Downey/Lagana) – Requires the adoption of nepotism policies by school districts and charter schools.

[Copy of Statement on A557](#)

A1220 (McKeon, Vainieri-Huttle, Jasey, Mukherji/Bateman, Vitale) – “Drama Therapists and Dance/Movement Therapists Licensing Act.”

[Copy of Statement on A1220](#)

Governor Murphy also announced that he has absolute vetoed the following bills:

S784 (Sarlo, Oroho/Burzichelli, Murphy) – Provides a gross income tax exclusion for attorney's fees and costs received in connection with certain unlawful discrimination, unlawful retaliation, and qui tam claims or actions.

[Copy of Statement on S784](#)

S1965 (Sweeney/Mukherji, McKnight, Chiaravalloti) – Allows individual to receive additional lifetime emergency assistance under certain circumstances.

[Copy of Statement on S1965](#)

S2663 (Sweeney, Singleton/Mazzeo, Murphy) – Subjects domestic equity investments of the Division of Investment to certain requirements, imposes requirements related to selection of external managers and protection of public sector jobs.

[Copy of Statement on S2663](#)

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