

1 **H. B. 2801**

2
3 (By Delegates Reynolds, R. Phillips, Skaff,
4 Andes, Swartzmiller and Miley)

5 [Introduced March 4, 2013; referred to the
6 Committee on Veterans' Affairs and Homeland Security then
7 Finance.]

**FISCAL
NOTE**

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9
10 A BILL to amend Code of West Virginia, 1931, as amended, be amended
11 by adding thereto a new section, designated §15-5-29, relating
12 to emergency management; creating the "West Virginia
13 Infrastructure Emergency Response Act of 2013"; definitions;
14 the presence of out-of-state employees and businesses,
15 including affiliates of in-state businesses, that temporarily
16 provide resources and personnel in the state during a state of
17 emergency declared by either the Governor, the Legislature or
18 the President of the United States; providing that these
19 businesses are exempt from requirements for business and
20 employee taxes or other criteria for purposes of certain state
21 and local taxes, licensing and regulatory requirements on a
22 temporary basis during the period they provide help and
23 assistance in response to a declared state disaster or
24 emergency; providing this exemption does not include certain

1 transaction taxes and fees during the emergency period, unless
2 otherwise exempted during an emergency period; providing for
3 legislative rules; and effective date.

4 *Be it enacted by the Legislature of West Virginia:*

5 That the Code of West Virginia, 1931, as amended, be amended
6 by adding thereto a new section, designated §15-5-29, to read as
7 follows:

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

9 **§15-5-29. Infrastructure company emergency response provisions.**

10 (a) Many businesses bring in resources and personnel from
11 other states throughout the United States on a temporary basis to
12 expedite the often enormous and overwhelming task of cleaning up,
13 restoring and repairing damaged buildings, equipment and property
14 or even deploying or building new replacement facilities in the
15 state during times of storm, flood, fire, earthquake, hurricane or
16 other disaster or emergency.

17 (b) This may involve the need for out-of-state businesses,
18 including out-of-state affiliates of businesses based in the state
19 to bring in resources, property or personnel that previously have
20 had no connection to the state to perform activity in the state,
21 including but not limited to, repairing, renovating, installing,
22 building, rendering services or other business activities and for
23 which personnel may be located in the state for extended periods of
24 time to perform such activities.

1 (c) These businesses and individual employees should not be
2 burdened by any requirements for business and employee taxes, as a
3 result of these activities in the state for a temporary period,
4 during the time of operating in the state on a temporary basis
5 solely for purposes of helping the state recover from the disaster
6 or emergency.

7 (d) The state's nexus and residency thresholds are intended
8 for businesses and individuals in the state as part of the conduct
9 of regular business operations or who intend to reside in the state
10 and should not be directed at businesses and individuals coming
11 into the state on a temporary basis to provide help and assistance
12 in response to a declared state emergency.

13 (e) To ensure that businesses may focus on quick response to
14 the needs of the state and its citizens during a declared state
15 emergency, it is appropriate for the Legislature to determine that
16 this activity, for a reasonable period of time before, during and
17 after the disaster or emergency for repairing and restoration of
18 the often devastating damage to property and infrastructure in the
19 state, does not establish presence, residency, doing business in
20 the state or any other criteria for purposes of state and local
21 taxes, licensing and regulatory requirements.

22 (f) For purposes of this section, the following terms have the
23 following meanings:

24 (1) "Registered Business in the State" (or "Registered

1 Business") means a business entity that is currently registered to
2 do business in the state prior to the declared state emergency.

3 (2) "Out-of-State Business" means for purposes of this
4 legislation a business entity that has no presence in the state and
5 conducts no business in the state whose services are requested by
6 a registered business or by the state or local government for
7 purposes of performing emergency related work in the state. This
8 also includes a business entity that is affiliated with the
9 registered business in the state solely through common ownership.
10 The "Out-of-State Business" has no registrations or tax filings or
11 nexus in the state prior to the declared state emergency.

12 (3) "Out-of-State Employee" means for purposes of this
13 legislation an employee who does not work in the state.

14 (4) "Disaster or Emergency Related Work" means repairing,
15 renovating, installing, building, rendering services or other
16 business activities that relate to infrastructure that has been
17 damaged impaired or destroyed by the declared state emergency,
18 including those activities defined in subsections (i) and (j),
19 section two of this article.

20 (5) "Infrastructure" means for purposes of this legislation
21 property and equipment owned or used by communications networks,
22 electric generation, transmission and distribution systems, gas
23 distribution systems, water pipelines and public roads and bridges
24 and related support facilities that services multiple customers or

1 citizens including, but not limited to, real and personal property
2 such as buildings, offices, lines, poles, pipes, structures and
3 equipment.

4 (6) "Declared State of Emergency" means a disaster or
5 emergency event: (i) For which the Governor or the Legislature has
6 declared a State of Emergency Proclamation under the Emergency
7 Powers in section six of this article; (ii) for which a
8 Presidential Declaration of a Federal Major Disaster or Emergency
9 has been issued; or (iii) or other emergency event within the state
10 for which a good faith response effort is required and for which
11 another authorized official of the state including, but not limited
12 to, an official of the West Virginia Division of Homeland Security
13 and Emergency Management is given notification from the registered
14 business and the official designates the event as emergency thereby
15 invoking the provisions of this article.

16 (7) "Emergency Period" means a period that begins within ten
17 days of the first day of the Governor's or Legislatures' State of
18 Emergency Proclamation or the President's Declaration or
19 designation by an other authorized official of the state as set
20 forth in section four of this article (whichever occurs first) and
21 that extends for a period of sixty calendar days after the end of
22 the declared emergency period.

23 (g) An out-of-state business that conducts operations within
24 the state for purposes of performing work or services related to a

1 declared state of emergency during the emergency period shall not
2 be considered to have established a level of presence that would
3 require that business to register, file and remit state or local
4 taxes or that would require that business or its out-of-state
5 employees to be subject to any state licensing or registration
6 requirements. This includes any and all state or local business
7 licensing or registration requirements or state and local taxes or
8 fees including, but not limited to, unemployment insurance, state
9 or local occupational licensing fees and sales and use tax or ad
10 valorem tax on equipment used or consumed during the emergency
11 period, Public Service Commission or Secretary of State licensing
12 and regulatory requirements. For purposes of any state or local
13 tax on or measured by, in whole or in part, net or gross income or
14 receipts, all activity of the out-of-state business that is
15 conducted in this state pursuant to this section shall be
16 disregarded with respect to any filing requirements for such tax
17 including the filing required for a unitary or combined group of
18 which the out-of-state business may be a part.

19 (h) Any out-of-state employee as defined herein may not be
20 considered to have established residency or a presence in the state
21 that would require that person or that person's employer to file
22 and pay income taxes or to be subjected to income tax withholdings
23 or to file and pay any other state or local tax or fee during the
24 emergency period. This includes any related state or local

1 employer withholding and remittance obligations.

2 (i) Out-of-state businesses and out-of-state employees shall
3 pay transaction taxes and fees including, but not limited to, fuel
4 taxes or sales or use taxes on materials or services subject to
5 sales or use tax, hotel taxes, car rental taxes or fees that the
6 out-of-state business or out-of-state employee purchases for use or
7 consumption in the state during the emergency period, unless such
8 taxes are otherwise exempted during an emergency period.

9 (j) Any out-of-state business or out-of-state employee that
10 remains in the state after the emergency period will become subject
11 to the state's normal standards for establishing presence,
12 residency or doing business in the state and will therefore become
13 responsible for any business or employee tax requirements that
14 ensue.

15 (k) The out-of-state business that enters the state shall,
16 upon request, provide to the West Virginia Division of Homeland
17 Security and Emergency Management a statement that it is in the
18 state for purposes of responding to the disaster or emergency,
19 which statement shall include the business' name, state of
20 domicile, principal business address, federal tax identification
21 number, date of entry, and contact information.

22 (l) A registered business shall, upon request, provide the
23 information required in paragraph one of this section for any
24 affiliate that enters the state that is an out-of-state business.

1 The notification shall also include contact information for the
2 registered business in the state.

3 (m) An out-of-state business or an out-of-state employee that
4 remains in the state after the emergency period shall complete
5 state and local registration, licensing and filing requirements
6 that ensue as a result of establishing the requisite business
7 presence or residency in the state applicable under the existing
8 rules.

9 (n) The West Virginia Division of Homeland Security and
10 Emergency Management shall propose rules for legislative approval
11 in accordance with the provisions of article three, chapter twenty-
12 nine-a of this code, including the development and issuance of
13 forms or online processes to maintain and make available an annual
14 record of any designations pursuant to the provisions of subsection
15 (f) (4) of this section, in order to implement the purpose of this
16 section.

17 (o) This section may be referred to as the "West Virginia
18 Infrastructure Emergency Response Act of 2013".

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NOTE: The purpose of this bill is to create the "West Virginia Infrastructure Emergency Response Act of 2013". It provides exemption from requirements for business and employee taxes or other criteria for purposes of certain state and local taxes, licensing and regulatory requirements on a temporary basis during for 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 declared by either the Governor, the Legislature or the President of the United States.

This section is new; therefore, it has been completely underscored.