

Senate Bill No. 591

(By Senator Carmichael)

[Introduced March 21, 2013; referred to the Committee on the
Judiciary; and then to the Committee on Finance.]

10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new section, designated §15-5-29, relating to
12 emergency management; creating the West Virginia
13 Infrastructure Emergency Response Act of 2013; definitions;
14 the presence of nonresident 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

1 emergency; providing this exemption does not include certain
2 transaction taxes and fees during the emergency period, unless
3 otherwise exempted during an emergency period; providing for
4 legislative rules; and effective date.

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

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

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

10 **§15-5-29. Infrastructure company emergency response provisions.**

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

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

1 which personnel may be located in the state for extended periods of
2 time to perform such activities.

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

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

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

1 (f) For purposes of this section, the following terms have the
2 following meanings:

3 (1) "Registered business in the state" or "registered
4 business" means a business entity that is currently registered to
5 do business in the state prior to the declared state emergency.

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

15 (3) "Nonresident employee" means for purposes of this
16 legislation an employee who does not work in the state.

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

23 (5) "Infrastructure" means for purposes of this legislation

1 property and equipment owned or used by communications networks,
2 electric generation, transmission and distribution systems, gas
3 distribution systems, water pipelines and public roads and bridges
4 and related support facilities that services multiple customers or
5 citizens including, but not limited to, real and personal property
6 such as buildings, offices, lines, poles, pipes, structures and
7 equipment.

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

20 (7) "Emergency period" means a period that begins within ten
21 days of the first day of the Governor's or Legislatures' State of
22 Emergency Proclamation or the President's declaration or
23 designation by an other authorized official of the state as set

1 forth in section four of this article (whichever occurs first) and
2 that extends for a period of sixty calendar days after the end of
3 the declared emergency period.

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

1 (h) Any nonresident employee as defined herein may not be
2 considered to have established residency or a presence in the state
3 that would require that person or that person's employer to file
4 and pay income taxes or to be subjected to income tax withholdings
5 or to file and pay any other state or local tax or fee during the
6 emergency period. This includes any related state or local
7 employer withholding and remittance obligations.

8 (i) Nonresident businesses and nonresident employees shall pay
9 transaction taxes and fees including, but not limited to, fuel
10 taxes or sales or use taxes on materials or services subject to
11 sales or use tax, hotel taxes, car rental taxes or fees that the
12 non-resident business or non-resident employee purchases for use or
13 consumption in the state during the emergency period, unless such
14 taxes are otherwise exempted during an emergency period.

15 (j) Any nonresident business or nonresident employee that
16 remains in the state after the emergency period will become subject
17 to the state's normal standards for establishing presence,
18 residency or doing business in the state and will therefore become
19 responsible for any business or employee tax requirements that
20 ensue.

21 (k) The nonresident business that enters the state shall, upon
22 request, provide to the West Virginia Division of Homeland Security
23 and Emergency Management a statement that it is in the state for

1 purposes of responding to the disaster or emergency, which
2 statement shall include the business' name, state of domicile,
3 principal business address, federal tax identification number, date
4 of entry, and contact information.

5 (l) A registered business shall, upon request, provide the
6 information required in subsection (k) of this section for any
7 affiliate that enters the state that is a nonresident business. The
8 notification shall also include contact information for the
9 registered business in the state.

10 (m) A nonresident business or a nonresident employee that
11 remains in the state after the emergency period shall complete state
12 and local registration, licensing and filing requirements that ensue
13 as a result of establishing the requisite business presence or
14 residency in the state applicable under the existing rules.

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

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

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 nonresident 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, strike-throughs and underscoring have been omitted.