

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: CS/CS/CS/SB 1262

INTRODUCER: Appropriations Committee; Finance and Tax Committee; Military and Veterans Affairs, Space, and Domestic Security Committee; and Senator Simpson

SUBJECT: Emergency Management

DATE: March 2, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sanders</u>	<u>Ryon</u>	<u>MS</u>	<u>Fav/CS</u>
2.	<u>Fournier</u>	<u>Diez-Arguelles</u>	<u>FT</u>	<u>Fav/CS</u>
3.	<u>Fournier</u>	<u>Kynoch</u>	<u>AP</u>	<u>Fav/CS</u>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/CS/SB 1262 provides that out-of-state businesses and employees who enter this state to perform emergency-related work during a disaster-response period are excluded from certain registration and licensing requirements and taxes.

Specifically, the bill provides that an out-of-state business performing emergency-related work or conducting operations pursuant to a mutual aid agreement during a disaster-response period is not considered to have established a level of presence that would require the business to register, file, and remit state or local taxes or fees. Such an out-of-state business would not be subject to any of the following:

- Reemployment assistance taxes;
- State or local professional or occupational licensing requirements or related fees;
- Local business taxes;
- Taxes on the operation of commercial motor vehicles;
- Corporate income tax; and

Tangible personal property tax on specified equipment brought into the state by the out-of-state business.

Additionally, an out-of-state employee performing emergency-related work in this state is not required to comply with state or local occupational licensing requirements, or pay related fees. An out-of-state business or out-of-state employee who remains in this state after the disaster-response period is not entitled to the exclusions provided in the bill and will be subject to the state's normal standards for establishing presence or residency or doing business in this state.

The bill takes effect upon becoming law.

## **II. Present Situation:**

### **Emergency Management**

According to the Florida Division of Emergency Management (FDEM), Florida may be considered the most vulnerable state in the nation to the impacts from hurricanes, tropical storms, and tropical depressions. In addition, the state of Florida is vulnerable to numerous other types of severe weather such as tornadoes, drought, various types of flooding, and extreme temperatures, including freezes. The vulnerable geography and environment of the state combined with the subtropical climate create continuous threats from these severe weather events.<sup>1</sup>

#### ***Florida Division of Emergency Management***

The FDEM administers programs to rapidly apply all available aid to impacted communities stricken by emergency.<sup>2</sup> The FDEM is responsible for maintaining a comprehensive statewide program of emergency management to ensure that Florida is prepared to respond to emergencies, recover from them, and mitigate against their impacts. In doing so, the FDEM coordinates efforts with and among the federal government, other state agencies, local governments, school boards, and private agencies that have a role in emergency management.<sup>3</sup>

#### ***Emergency Management Powers of the Governor***

The Governor is responsible for meeting the dangers presented to this state and its people by emergencies.<sup>4</sup> In the event of an emergency beyond local control, the Governor, or his or her designee, may assume direct operational control over all or any part of the emergency management functions within this state.<sup>5</sup> As part of the Governor's power, he or she may by executive order or proclamation declare a state of emergency. A state of emergency has the force and effect of law and assists in the management of an emergency by activating the emergency mitigation, response, and recovery aspects of the state, local, and interjurisdictional emergency management plans applicable to the political subdivision or area in question.<sup>6</sup> A state of emergency may be declared if the Governor finds that an emergency has occurred or is imminent.

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<sup>1</sup> Florida Division of Emergency Management, *The State of Florida Tropical and Non-Tropical Severe Weather Annex to the 2014 Florida Comprehensive Emergency Management Plan*, available at <http://www.floridadisaster.org/documents/CEMP/2014/2014%20Hazard%20Annexes/2014%20Tropical%20and%20Non-Tropical%20Severe%20Weather%20Annex%20to%20the%20CEMP.pdf> (last visited, Feb. 3, 2016).

<sup>2</sup> Section 14.2016, F.S.

<sup>3</sup> Section 252.35(1), F.S.

<sup>4</sup> Section 252.36(1)(a), F.S.

<sup>5</sup> Id.

<sup>6</sup> Section 252.36, F.S.

Section 213.055, F.S., provides that certain actions to waive or suspend a revenue law may be implemented only when the Governor has declared a state of emergency pursuant to s. 252.36, F.S. These actions are the granting of refunds of state and local taxes on donated motor and diesel fuel in cases in which the state solicits the donation, and the extension of due dates for tax returns and payments, plus a waiver of accrued interest on taxes due prior to and during the period of the disaster.

A state of emergency may continue for no longer than 60 days unless renewed by the Governor.<sup>7</sup> The Legislature by concurrent resolution may terminate a state of emergency at any time.<sup>8</sup>

### **Other States' Legislation Regarding Disaster Assistance Providers**

The American Legislative Exchange Council (ALEC) and the National Conference of State Legislatures (NCSL) have approved model legislation for states to consider to address states' tax and regulatory policies that have historically slowed efforts to respond to natural disasters. The model legislation proposes that activities for repairing damage to critical communications networks and utility-related infrastructure in a state during and after an officially-declared disaster or emergency should not establish a nexus for state and local business activity tax purposes and business licensing. The NCSL Executive Committee Task Force on State and Local Taxation initially adopted this model legislation in 2011 and the ALEC Board of Directors adopted it in 2012.

A December 2011 NCSL resolution emphasizes the importance of repairing and replacing damaged infrastructure, specifically buildings, roads, communications networks, and utility lines, caused by an emergency or disaster.<sup>9</sup> According to the NCSL, such damage results in an interruption of crucial civic and business services to a state's citizens and that the demand for resources to repair and replace the damaged property and infrastructure can exceed local capacity.<sup>10</sup> In order to promptly address an interruption of service companies may need to bring in resources on a temporary basis from out-of-state, including materials, equipment, temporary shelters, and personnel to assist in the repair and restoration of the damaged infrastructure and property.<sup>11</sup> Twenty-two state legislatures have enacted the model legislation and it is currently effective in 21 states.<sup>12</sup>

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<sup>7</sup> Section 252.36(2), F.S.

<sup>8</sup> Id.

<sup>9</sup> National Conference of State Legislatures, *NCSL Resolution on Response to Declared Disaster to Repair and Replace Damaged Infrastructure* (Dec. 2011), available at <http://www.ncsl.org/ncsl-in-dc/standing-committees/communications-financial-services-and-interstate-commerce/resolution-on-response-to-declared-disasters.aspx> (last visited Jan. 28, 2016).

<sup>10</sup> Id.

<sup>11</sup> Id.

<sup>12</sup> National Conference of State Legislatures, *NCSL Disaster Legislation Status Update* (Jan. 2016), available at <http://www.ncsl.org/research/telecommunications-and-information-technology/ncsl-disaster-legislation-status.aspx> (last visited Jan. 26, 2016).

## **State Revenue Sources Referenced in the Bill**

### ***Reemployment Assistance Taxes***

Florida's Reemployment Assistance Program imposes a tax on wages paid by Florida employers to pay for unemployment benefits received by unemployed individuals. The tax imposed on the first \$7,000 of compensation paid to each employee. The tax rate varies from 0.1 percent to 5.4 percent depending upon the benefit experience of the employer.<sup>13</sup>

### ***Professional and Occupational Licensing Fees***

The Department of Business and Professional Regulation (DBPR) is the agency charged with licensing and regulating various businesses and professionals in this state. Many professions and occupations pay annual or biennial examination and license fees designed to cover the cost of regulation.<sup>14</sup> Section 455.213, F.S., provides the general provisions for issuance of professional licensure by the DBPR.

There are 22 professions regulated by DBPR. Cumulatively, there are more than 450 fees associated with the regulation of these professions. The fees range from \$5 to \$2,500.<sup>15</sup>

### ***Local Business Taxes***

The local business tax is the method by which a local government grants the privilege of engaging in or managing any business, profession, and occupation within its jurisdiction. Counties and municipalities may levy a business tax, and the tax proceeds are considered general revenue for the local government.<sup>16</sup>

### ***Taxes on the Operation of Commercial Motor Vehicles***

Motor vehicles and mobile homes must register annually in Florida. License fees for private autos and light trucks range from \$14.50 to \$32.50 according to vehicle weight. License fees for truck tractors are based on gross vehicle weight and range from \$60.75 to \$1,322. Mobile home license fees range from \$20 to \$80 according to length, and recreational vehicle license fees are \$27 to \$47.25 depending on vehicle type and weight.<sup>17</sup>

### ***Corporate Income Tax***

Certain corporations doing business in Florida must pay a tax of 5.5 percent of income earned in Florida.

### ***Tangible Personal Property Tax***

Tangible Personal Property (TPP)--all goods, chattels, and other articles of value (excluding some vehicular items) capable of manual possession and whose chief value is intrinsic to the

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<sup>13</sup> Florida Revenue Estimating Conference, *2016 Florida Tax Handbook*, 150.

<sup>14</sup> *Id.* at 147.

<sup>15</sup> *Id.* at 148.

<sup>16</sup> Office of Economic and Demographic Research, *2014 Local Government Financial Information Handbook, Local Business Tax* (Dec. 2014), 147.

<sup>17</sup> *Supra* note 15, at 132.

article itself—is subject to ad valorem taxation. Inventory and household goods are excluded from this tax.<sup>18</sup>

Anyone who owns TPP on January 1 and who has a proprietorship, partnership, or corporation, or is a self-employed agent or contractor, must file a tangible personal property return with the property appraiser by April 1 of each year.<sup>19</sup> Tangible personal property physically present in the state on or after January 1 for temporary purposes only (30 days or less) is not subject to assessment for property tax purposes.<sup>20</sup>

### III. Effect of Proposed Changes:

#### **Out-of-State Businesses and Employees Performing Emergency-related Work**

Section 1 of the bill amends s. 213.055, F.S., to provide that out-of-state businesses and employees who enter this state to perform emergency-related work during a disaster-response period are excluded from certain registration and licensing requirements and taxes.

The bill defines the following terms:

*Disaster-response period* means:

- A period that begins 10 calendar days before the first day of a declared state of emergency and ends on the 60th calendar day after the end of the declared state of emergency; or
- A period that begins on the date that an out-of-state business enters this state in good faith under a mutual aid agreement and in anticipation of or in response to a disaster or emergency, regardless of whether a state of emergency is declared, and ends on the date that the work is concluded, or seven calendar days after the out-of-state business enters this state, whichever occurs first.

*Emergency-related work* means repairing, renovating, installing, building, rendering services, or other business activities that relate to infrastructure that has been damaged, impaired, or destroyed by an event that has resulted in a declaration of a state of emergency; or rendering such services or performing such activities in anticipation of a disaster, regardless of whether a state of emergency is declared.

*Infrastructure* means public roads; public bridges; property, equipment and related support facilities owned or used by communication networks, electric generating systems, electric transmission and distribution systems, gas distribution systems, or water pipelines.

*Mutual aid agreement* means an agreement to which one or more business entities are parties and under which a public utility, municipally owned utility, electric cooperative, a natural gas special district, a natural gas transmission pipeline, or a joint agency owning, operating, or owning and operating infrastructure used for electric generation, electric or gas transmission, or electric or gas distribution in this state may request that an out-of-state business perform work in this state in anticipation of a disaster or an emergency.

<sup>18</sup> Section 192.001(11)(d), F.S.

<sup>19</sup> See s. 193.062, F.S.

<sup>20</sup> Section 192.03(2), F.S.

*Out-of-state business* means a business entity that:

- Does not have a presence in this state, except with respect to the performance of emergency-related work, and conducts no business in this state, and whose services are requested by a registered business or by a unit of state or local government for purposes of performing emergency-related work in this state; and
- Is not registered and does not have tax filings or presence sufficient to require the collection or payment of a tax in this state during the tax year immediately before the disaster-response period. The term also includes a business entity that is affiliated with a registered business solely through common ownership.

*Out-of-state employee* means an employee who does not work in this state, except for emergency-related work on infrastructure during a disaster-response period.

*Registered business* means a business entity that is registered to do business in this state before the disaster-response period begins.

The bill provides that an out-of-state business performing emergency-related work or conducting operations pursuant to a mutual aid agreement during a disaster-response period is not considered to have established a level of presence that would require that business to register, file, and remit state or local taxes or fees. Such an out-of-state business would not be subject to any of the following:

- Reemployment assistance taxes;
- State or local professional or occupational licensing requirements or related fees;
- Local business taxes;
- Taxes on the operation of commercial motor vehicles;
- Corporate Income Tax; and
- Tangible personal property tax on specified equipment brought into the state by the out-of-state business.

Additionally, an out-of-state employee whose only employment in this state is for the performance of emergency-related work or pursuant to a mutual aid agreement during a disaster-response period is not required to comply with state or local occupational licensing requirements or related fees.

An out-of-state business or out-of-state employee who remains in this state after the disaster-response period is not entitled to the exclusions provided in the bill and will be subject to the state's normal standards for establishing presence or residency or doing business in this state.

The bill takes effect upon becoming law.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under CS/CS/CS/SB 1262, out-of-state businesses and employees who enter this state in order to perform emergency-related work may experience tax relief.

C. Government Sector Impact:

According to the Revenue Estimating Conference, the bill has a zero or negative but indeterminate, nonrecurring fiscal impact.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 213.055 of the Florida Statutes.

**IX. Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS/CS/CS by Appropriations on March 1, 2016:**

The committee substitute removes the section of the bill related to the Deepwater Horizon oil spill. It also limits the definition of “infrastructure” for the purposes of out-of-state businesses and employees responding to a disaster or emergency.

**CS/CS by Finance and Tax on February 16, 2016:**

The CS/CS amends s. 213.055, F.S., to clarify that the provisions of subsection (3) apply during a period before a state of emergency has been declared, while subsections (1) and (2) apply only during a declared state of emergency. The definition of “emergency-

related work” is clarified to include work done in response to, as well as in anticipation of, a disaster or emergency. The CS also clarifies that “infrastructure” includes electric transmission and distribution systems, and that an “out-of-state employee” is limited to performing emergency-related work on infrastructure in this state.

**CS by Military and Veterans Affairs, Space, and Domestic Security on February 1, 2016:**

As it relates to out-of-state business conducting emergency-related work in this state, the CS does the following:

- Relocates the bill provisions from the State Emergency Management Act (ch. 252) to the tax chapter (ch. 213) of the Florida Statutes.
- Removes the Gross Receipts Tax from the list of taxes that do not apply to an out-of-state business.
- Changes references to “disaster-related work or emergency-related work” to strictly “emergency-related work” and refines the definition of the term.
- Removes the provision allowing the Florida Division of Emergency Management to request notification from out-of-state businesses as they enter the state to perform emergency-related work.

The CS also addresses a settlement agreement between the Gulf states and BP with respect to economic and other claims arising from the Deepwater Horizon oil spill.

**B. Amendments:**

None.