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.)

Prepared By: The Professional Staff of the Committee on Military and Veterans Affairs, Space, and Domestic Security

BILL: SB 1262

INTRODUCER: Senator Simpson

SUBJECT: Emergency Management

DATE: January 29, 2016 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sanders	Ryon	MS	**Pre-meeting**
2.			FT	
3.			AP	

I. Summary:

SB 1262 creates s. 252.61, F.S. to establish the Facilitating Business Rapid Response to State Declared Disasters Act, which provides an exemption from certain registration and licensing requirements and taxes for out-of-state businesses and employees who enter this state to perform disaster-related or emergency-related work during a disaster-response period.

The bill provides that an out-of-state business 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 or require that business to be subject to any registration, licensing, or filing requirements in this state. Eligible out-of-state businesses are exempt from the following:

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

Out-of-state employees are not required to register, file, or remit state or local taxes and are exempt from complying with state or local occupational licensing requirements or paying related fees.

Upon request of the Division of Emergency Management (FDEM), an out-of-state business or an affiliated registered business must provide the FDEM a statement specifying that the out-of-state business has entered the state for purposes of performing disaster-related or emergency-related work.

An out-of-state business or out-of-state employee who remains in this state after the disaster-response period is not entitled to any exemptions provided in this section and is 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.[1]

Florida Division of Emergency Management

The FDEM administers programs to rapidly apply all available aid to impacted communities stricken by emergency.[2] 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.[3]

Emergency Management Powers of the Governor

The Governor is responsible for meeting the dangers presented to this state and its people by emergencies.[4] 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.[5] 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.[6] A state of emergency may be declared if the Governor finds that an emergency has occurred or is imminent.

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[1] 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%20%20to%20the%20CEMP.pdf

[2] Section 14.2016, F.S.

[3] Section 252.35(1), F.S.

[4] Section 252.36(1)(a), F.S.

[5] Id.

[6] Section 252.36, F.S.

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

Private Sector Response to Infrastructure Damage

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 for a reasonable period of time during and after an officially-declared disaster or emergency do not establish a nexus for state and local business activity tax purposes and business licensing.[9] 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.[10] 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.[11] 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.[12]

Twenty-two state legislatures have enacted the model legislation and it is currently effective in 21 states.[13]

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.[14]

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[7] Section 252.36(2), F.S.
[8] Id.
[9] However, the policy does not exempt businesses from use taxes and the exemption only lasts as long as the disaster period.
[10] 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).
[11] Id.
[12] Id.
[13] 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).
[14] Florida Revenue Estimating Conference, *2016 Florida Tax Handbook*, 150.

Professional and Occupational Licensing Fees

Many professions and occupations are regulated by the Department of Business and Professional Regulation and pay annual or biennial examination and license fees designed to cover the cost of regulation.[15]

Gross Receipts Taxes

The gross receipts tax is imposed at the rate of 2.5 percent on the gross receipts of sellers of electricity and natural or manufactured gas, and at a rate of 2.52 percent on the gross receipts of sellers of communications services. There is an additional 2.6 percent gross receipts tax levied against the electricity sales tax base.[16]

Local Business Taxes

The local business tax represents the fees charged and 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. This tax does not refer to any fees or licenses paid to any board, commission, or officer for permits, registration, examination, or inspection.[17]

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.[18]

Corporate Income Tax

Certain corporations doing business in Florida must pay tax on 5.5 percent on income earned in Florida. Florida “piggybacks” the federal income tax code in its determination of taxable income. Taxable income earned by corporations operating in more than one state is taxed in Florida on an apportioned basis using a formula based 25 percent on property, 25 percent on payroll and 50 percent on sales. The first $50,000 of net income is exempt, effective with tax years beginning January 1, 2013.[19]

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[15] Id. at 147.
[16] Supra note 15, at 91.
[17] Office of Economic and Demographic Research, *2014 Local Government Financial Information* Handbook, *Local Business Tax* (Dec. 2014), 147.
[18] Supra note 15, at 132.
[19] Id. at 58.

Tangible Personal Property Tax

Tangible Personal Property (TPP) means all goods, chattels, and other articles of value (excluding some vehicular items) capable of manual possession and whose chief value is intrinsic to the article itself. Inventory and household goods are excluded.[20]

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 to the property appraiser by April 1 of each year.[21] Property owners who lease, lend, or rent property must also file.

III. Effect of Proposed Changes:

The bill creates s. 252.61, F.S., to establish the Facilitating Business Rapid Response to State Declared Disasters Act, which provides an exemption from certain registration and licensing requirements and taxes for out-of-state businesses and employees who enter this state to perform disaster-related or emergency-related work during a disaster-response period.

The bill defines the following terms:

Disaster-related work or *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.

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 a disaster, regardless of whether a state of emergency is declared, and ends on the date that the work is concluded, or 7 calendar days after the out-of-state business enters this state, whichever occurs first.

Infrastructure means public roads; public bridges; property and equipment owned or used by communication networks, electric generating systems, transmission and distribution systems, gas distribution systems, or water pipelines; and related support facilities that serve multiple persons which include, but are not limited to, buildings, offices, power and communication lines and poles, pipes, structures, and equipment.

Mutual aid agreement means an agreement to which one or more business entities are parties and under which a public utility, municipally owned utility, or joint agency owning, operating, or owning and operating infrastructure used for electric generation, transmission, or 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.

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[20] Section 192.001(11)(d), F.S.
[21] See s. 193.062, 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 disaster-related work or emergency-related work, that 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 disaster-related work or 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 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 disaster-related work or emergency-related work 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 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 or require that business to be subject to any registration, licensing, or filing requirements in this state. Eligible out-of-state businesses are exempt from the following:

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

An out-of-state employee whose only employment in this state is for the performance of disaster-related or emergency-related work during a disaster-response period is not required to:

- Register, file, or remit state or local taxes.
- Comply with state or local occupational licensing requirements or related fees.

Any such out-of-state business or out-of-state employee is subject to motor vehicle and other fuel taxes imposed pursuant to chapter 206 and sales and use taxes imposed pursuant to chapter 212, unless the business or employee is otherwise exemption from such tax.

Upon request of the Division of Emergency Management (FDEM), the out-of-state business must provide the FDEM a statement specifying that the business has entered the state for the purpose of performing disaster-related or emergency-related work. The statement must include the following information regarding the out-of-state business:

- The business name.
- The state of domicile.
- The address of its principal office.
- The federal tax identification number.
- The date that the business entered the state.
- Contact information.

A registered business may also be asked by the FDEM to submit the above information for any affiliate of the registered business which has entered the state as an out-of-state business. The statement must include the information for the registered business in addition to that of the affiliate.

An out-of-state business or out-of-state employee who remains in this state after the disaster-response period is not entitled to any exemptions provided in this section and is 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:

Out-of-state businesses and employees who enter this state in order to perform disaster-related or emergency-related work may experience tax relief.

C. Government Sector Impact:

The Revenue Estimating Conference has not yet adopted a fiscal impact for SB 1262 or similar language.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill creates a new section in ch. 252, F.S., to allow certain out-of-state businesses to be exempt from certain taxes. It would be more appropriate for the bill provisions to be established in a tax chapter as opposed to the emergency management chapter of Florida Statutes. The Department of Revenue (DOR) can only provide refund, protest, and taxpayer services for provisions in chapters it administers, which does not include ch. 252, F.S.[22] Additionally, the DOR cannot engage in any rulemaking relating to this exemption if it remains in ch. 252, F.S.[23]

According to the DOR, an out-of-state business should be required to notify the Division of Emergency Management (DEM) and the DOR of their exempt business activities.[24] The bill currently *allows* the DEM to request that the business notify the DEM only.

The bill specifically exempts out-of-state businesses from remitting gross receipts taxes under certain conditions. Gross receipts taxes are charged to purchasers of electric and communications services on a per-scale basis; as such, according to DOR, there is no simple way to exempt a business temporarily in Florida from payment of gross receipts tax on its purchase of electric and communications services, and accordingly DOR requests that the gross receipts tax exemption provision be placed in subsection (4), which addresses other transactional taxes.[25]

VIII. Statutes Affected:

This bill creates section 252.64 of the Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

[22] Department of Revenue. Legislative Bill Analysis for SB 1262 (2016). (On file with the Senate Military and Veterans Affairs, Space, and Domestic Security Committee)
[23] Id.
[24] Id.
[25] Id.