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MEMORANDUM

To: Chairman Olson and Members of the Senate Committee on Utilities

From: Matt Sterling, Assistant Revisor of Statutes

Date: 02/12/2015

Subject: Senate Bill 109

SB 109 would enable an out-of-state business that conducts operations within the state to perform disaster or emergency-related work to not be considered to have established a level of presence that would require that business to register, file or remit state or local taxes. The bill would create several new definitions that are used frequently though out the act.

Definitions

"***Declared state disaster or emergency***" means a disaster or emergency event declared by the governor pursuant to K.S.A. 48-924, and amendments thereto, a state or local disaster emergency declared by the chair of the board of county commissioners of any county or by the mayor or other principal executive officer of a city pursuant to K.S.A. 48-932, and amendments thereto, or a presidential declaration of a federal major disaster or emergency.

"***Disaster response period***" means a period that begins 10 days prior to the first day of a declared state disaster or emergency and that extends for a period of 60 calendar days after the end of the declared disaster or emergency period or any longer period authorized by the governor.

"***Disaster or emergency-related work***" means repairing, renovating, installing, building or rendering services or other business activities that relate to critical infrastructure that has been damaged, impaired or destroyed by the declared state disaster or emergency.

"***Critical infrastructure***" means property and equipment, or any related support facilities that service multiple customers or citizens, including, but not limited to, real and personal property such as buildings, offices, lines, poles, pipes, structures and equipment, that are owned or used by operators of:
(A) Telecommunications, cable or other communications networks;
(B) electric generation, transmission or distribution systems;
(C) natural gas and natural gas liquids gathering, processing, storage, transmission or distribution systems; or
(D) water pipelines.

"***Out-of-state business***" means a business entity that, prior to the declared state disaster or emergency and work related thereto:

(A) Has no presence, registrations or tax filings in the state and conducts no business in the state; and

(B) is requested by a registered business, state agency, county or city disaster agency established pursuant to K.S.A. 48-929, and amendments thereto, or interjurisdictional disaster agency established pursuant to K.S.A. 48-930, and amendments thereto, to provide disaster or emergency-related work in the state. This shall also include a business entity affiliated with a registered business solely through common ownership.

In addition to specifying that an out-of-state business that conducts operations within the state to perform disaster or emergency-related work would not be considered to have established a level of presence requiring it to register, file or remit state or local taxes, the bill would also apply to such business' out-of-state employees. The bill would exempt such out-of-state employees from: Any state or local business licensing or registration requirements, state or local taxes or fees and use tax or ad valorem tax on equipment used during the disaster response period, and licensing and regulatory requirements of the Kansas Corporation Commission or the Secretary of State. All disaster or emergency-related work of the out-of-state business that was conducted in Kansas pursuant to this section would be disregarded with respect to any tax filing requirements and would not be sourced to or impact or increase the amount of income, revenue or receipts apportioned to Kansas.

Any out-of-state employee would not be considered to have established residency or a presence in Kansas during the disaster response period. However, any out-of-state business or out-of-state employee that remains in the state after the disaster response period would become subject to the state's normal standards for establishing presence, residency or doing business in the state and would be responsible for any business or employee tax requirements or obligations thereafter. Out-of-state businesses and out-of-state employees would be responsible to pay transaction taxes and fees such as fuel taxes or sales or use taxes on tangible personal property, materials or services that were used during the disaster response period, unless such taxes were otherwise exempted during a disaster response period.

Upon request, an out-of-state business that enters the state would be required to provide the department of revenue a written statement that it is in the state for purposes of responding to a declared state disaster or emergency. Such statement would include the out-of-state business' name, state of domicile, principal business address, federal tax identification number, date of entry and contact information.

The department of revenue would be required to maintain an annual record of all state disasters and emergencies declared pursuant to this section and could promulgate any rules and regulations necessary to effectuate the provisions of the act.