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Legislative Document

No. 1836

H.P. 1357

House of Representatives, March 1, 2012

An Act To Facilitate Rapid Response by Out-of-state Businesses to State Disasters

(AFTER DEADLINE)

(EMERGENCY)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

Reference to the Committee on Labor, Commerce, Research and Economic Development suggested and ordered printed.

A handwritten signature in cursive script, reading 'Heather J.R. Priest'.

HEATHER J.R. PRIEST
Clerk

Presented by Representative KNIGHT of Livermore Falls.
Cosponsored by Senator RECTOR of Knox and
Representatives: BERRY of Bowdoinham, CURTIS of Madison, FITTS of Pittsfield, PILON of Saco, PRESCOTT of Topsham, STEVENS of Bangor, STRANG BURGESS of Cumberland, VALENTINO of Saco.

1 to businesses and individuals coming into the State on a temporary basis to provide
2 assistance in response to a declared state disaster or emergency.

3 To ensure that these businesses focus on responding quickly to the needs of the State
4 and its citizens during a declared state disaster or emergency, the Legislature finds that it
5 is appropriate to consider that such activity for a reasonable period of time during and
6 after the disaster or emergency undertaken to repair and restore property and
7 infrastructure in the State does not establish presence or residency in this State, constitute
8 doing business in the State or meet any other criteria for purposes of subjecting the
9 businesses to state and local taxes or licensing and regulatory requirements.

10 **§9902. Definitions**

11 As used in this chapter, unless the context otherwise indicates, the following terms
12 have the following meanings.

13 **1. Declared state disaster or emergency.** "Declared state disaster or emergency"
14 means a disaster or emergency event for which a Governor's state of emergency
15 proclamation has been issued pursuant to Title 37-B, section 742 or that the President of
16 the United States has declared to be a major disaster or emergency.

17 **2. Disaster period.** "Disaster period" means the period of time that begins no later
18 than 10 days following the Governor's proclamation of a state of emergency or the
19 declaration by the President of the United States of a major disaster or emergency,
20 whichever occurs first, and that extends for a period of 60 calendar days following the
21 end of the declared disaster or emergency as proclaimed by the Governor pursuant to
22 Title 37-B, section 743 or the President of the United States or pursuant to law,
23 whichever occurs first.

24 **3. Infrastructure.** "Infrastructure" means:

25 A. Property and equipment, including related support facilities that provide service
26 to more than one customer or person, owned or used by a public utility as defined in
27 Title 35-A, section 102, subsection 13 or by a communications service provider as
28 defined in Title 35-A, section 9202, subsection 4. "Infrastructure" includes, without
29 limitation, real and personal property such as buildings, offices, power lines, poles,
30 pipes, structures and equipment; and

31 B. Public roads and bridges.

32 **4. Out-of-state business.** "Out-of-state business" means a business entity:

33 A. That does not have a presence in the State;

34 B. That does not conduct business in the State; and

35 C. Whose assistance in performing work in this State, such as repairing, renovating,
36 installing or building infrastructure, rendering services or engaging in other business
37 activities, related to a declared state disaster or emergency is requested by the State, a
38 county, city, town or other political subdivision of the State or a registered business.

1 "Out-of-state business" includes a business entity that is affiliated with a registered
2 business solely through common ownership as long as that business entity does not have
3 any registrations, tax filings or nexus in the State prior to the declared state disaster or
4 emergency.

5 **5. Out-of-state employee.** "Out-of-state employee" means an individual who
6 performs services for an out-of-state business in return for compensation and who, prior
7 to the declared state disaster or emergency, was neither a resident of this State nor had a
8 nexus in the State.

9 **6. Registered business.** "Registered business" means a business entity that is
10 registered or licensed to do business in the State prior to the declared state disaster or
11 emergency.

12 **§9903. Status of out-of-state businesses and employees during disaster period**

13 **1. Out-of-state businesses.** Notwithstanding Title 36, section 5211 or any other
14 provision of law to the contrary, and except as provided in subsection 3, during a disaster
15 period an out-of-state business that conducts operations within the State for the purpose
16 of performing work or providing services related to a declared state disaster or emergency
17 is deemed to have not established a level of presence that would require that business to
18 register, file or remit state or local taxes or that would require that business or its out-of-
19 state employees to be subject to any state or local employment, licensing or registration
20 requirements, including, but not limited to:

21 A. Business licensing or registration requirements;

22 B. State or local taxes or fees such as unemployment insurance or workers'
23 compensation insurance;

24 C. Occupational licensing fees;

25 D. Sales and use tax on equipment used or consumed by that out-of-state business or
26 its out-of-state employees during the disaster period; and

27 E. Income tax withholding or remittance.

28 **2. Out-of-state employees.** Notwithstanding Title 36, section 5142 or any provision
29 of law to the contrary, and except as provided in subsection 3, during a disaster period an
30 out-of-state employee performing work or providing services in this State related to a
31 declared state disaster or emergency is deemed to have not established residency or a
32 presence in the State that would require that out-of-state employee or that out-of-state
33 employee's employer to file and pay income taxes or to be subject to state income tax
34 withholdings or to file and pay any other state or local tax or fee during the disaster
35 period.

36 **3. Sales and use taxes and fees.** An out-of-state business and an out-of-state
37 employee are required to pay sales and use taxes and fees, including, but not limited to,
38 fuel taxes, sales and use taxes on materials and services subject to sales and use tax,
39 lodging taxes and vehicle rental taxes or fees, on purchases or leases of tangible personal
40 property and taxable services sold at retail for use or consumption in the State during a
41 disaster period, unless those taxes or fees are otherwise waived during a disaster period.

1 **4. Status after disaster period.** After the termination of a disaster period, an out-of-
2 state business or out-of-state employee that remains in the State is subject to the State's
3 standards for establishing presence or residency or for doing business in the State and
4 shall meet all business and employee tax requirements.

5 **§9904. Notification**

6 **1. Notification by out-of-state businesses during disaster period.** An out-of-state
7 business shall provide notification to the Secretary of State as soon as practicable after
8 entry to the State during a disaster period that the out-of-state business is in the State for
9 purposes of responding to the declared state disaster or emergency. The out-of-state
10 business shall provide to the Secretary of State information related to the out-of-state
11 business including but not limited to the following:

12 A. Name;

13 B. State of domicile;

14 C. Principal business address;

15 D. Federal employer identification number;

16 E. The date when the out-of-state business entered the State; and

17 F. Contact information while the out-of-state business is in this State.

18 **2. Registered businesses.** A registered business shall provide the notification
19 required in subsection 1 for an affiliate of the registered business that enters the State as
20 an out-of-state business. The notification under this subsection also must include contact
21 information for the registered business in the State.

22 **3. Notification of intent to remain in the State.** An out-of-state business that
23 remains in the State after a disaster period shall notify the Secretary of State and shall
24 meet all registration, licensing and filing requirements resulting from establishing a
25 business presence in the State.

26 **§9905. Rulemaking**

27 The Secretary of State, in consultation with the Department of Administrative and
28 Financial Services, Bureau of Revenue Services, the Department of Professional and
29 Financial Regulation, the Department of Economic and Community Development and the
30 Department of Defense, Veterans and Emergency Management, Maine Emergency
31 Management Agency, shall adopt routine technical rules, as defined in Title 5, chapter
32 375, subchapter 2-A, to implement the provisions of this chapter. Notification and
33 registration procedures adopted by rule must allow a person to obtain and complete any
34 required forms using a publicly accessible website on the Internet.

35 **Emergency clause.** In view of the emergency cited in the preamble, this
36 legislation takes effect when approved.

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SUMMARY

This bill allows an out-of-state business to enter the State when a Governor's state of emergency proclamation or a declaration by the President of the United States of a major disaster or emergency has been issued without subjecting that out-of-state business or its employees to the licensing, registration and taxation requirements imposed on businesses and individuals that reside in the State. Following the disaster period, which ends 60 days after the disaster or emergency is over, any exemption ends. A business or employee that continues to reside in the State after the disaster period ends is subject to all registration, licensing and taxation requirements normally imposed.