

- SUBJECT:** Exempting businesses, employees in disaster relief from requirements
- COMMITTEE:** Homeland Security and Public Safety — favorable, without amendment
- VOTE:** 9 ayes — Phillips, Nevárez, Burns, Dale, Johnson, Metcalf, Moody, M. White, Wray
- 0 nays
- WITNESSES:** For — Bob Digneo, AT&T Texas; John W. Fainter, Jr., Association of Electric Companies of Texas, Inc.; (*Registered, but did not testify:* Skip Ogle, Cable; Henry Flores, CenturyLink, Inc.; Leo Munoz, Comcast; Donna Warndof, Harris County; Velma Cruz, Sprint; Lucas Meyers, Texas Cable Association; Riley Stinnett, Texas Gas Service; Ian Randolph, Texas Telephone Association; Todd Baxter, Time Warner Cable; Jennifer Fagan, Windstream Communications)
- Against — None
- On — (*Registered, but did not testify:* Walter Roberts, Associated Security Services and Investigators of Texas; Sherrie Zgabay, Texas Department of Public Safety-Regulatory Services)
- DIGEST:** HB 2358 would amend the Business and Commerce Code to exempt out-of-state business entities from certain obligations if their business in Texas was limited to disaster- or emergency-related work during a disaster response period.
- The bill would define “disaster response period” to mean the period that began 10 days before the earliest event establishing a state disaster or emergency declared by the relevant authorities. The period would end 60 days after the ending date of the disaster or emergency period or on a later date as determined by the secretary of state.
- Under the bill, these business entities would not be required to:

- register with the secretary of state;
- file a tax report with or pay taxes or fees to the state or a political subdivision of the state;
- pay a property tax or use tax on equipment that the business entity brings into Texas and is used only by the entity to perform disaster or emergency-related work during the disaster response period, and is removed from the state after the disaster response period;
- comply with any state or local business licensing or registration requirements; or
- comply with any state or local occupational licensing requirements or related fees.

The bill also would exempt from certain obligations out-of-state employees whose only employment in Texas was to perform disaster- or emergency-related work during a disaster response period. These employees would not be required to:

- file a tax report with or pay taxes or fees to the state or a political subdivision of the state; or
- comply with any state or local occupational licensing requirements or related fees.

The bill would not allow out-of-state business entities and employees to be entitled to any of these exemptions if they remained in Texas after a disaster response period.

The bill also would require that out-of-state business entities and employees who were performing only disaster- or emergency-related work during a disaster response period be subject to a transaction tax or fee, including a motor fuels tax, sales or use tax, hotel occupancy tax, and the tax imposed on the rental of a motor vehicle unless the entity or employee was otherwise exempt from the tax or fee.

The bill would require an out-of-state business entity to provide the secretary of state, at the secretary's request, a statement that the entity came to Texas for the purpose of performing disaster- or emergency-

related work during a disaster response period. The statement would have to include:

- the entity's name;
- the entity's jurisdiction of formation;
- the address of the principal office of the entity;
- the entity's federal tax identification number;
- the date that the entity entered the state; and
- contact information for the entity.

The bill would require an in-state business entity to provide all the same information to the secretary of state, at the secretary's request, for any affiliate of the in-state business entity that entered Texas as an out-of-state business entity. The secretary of state would be required to keep records of and make available to the public any statements or information provided to the secretary under these requirements. The secretary of state would be required to adopt regulations to implement the bill, including developing any necessary forms or processes.

The bill would amend the Tax Code to exempt out-of-state businesses from certain obligations if the business' physical presence in the state was only for its performance of disaster- or emergency-related work during a disaster response period. The bill would exempt these businesses from being considered as engaged in business in the state and from having to file a tax report, and would exempt taxable items from being taxed if they were sold, leased, or rented by the out-of-state business entity.

The bill also would amend the definition of a taxable entity to exclude out-of-state business entities whose sole connection to state taxation requirements was their provision of disaster- or emergency-related work during a disaster response period. The exclusion in this section of these business entities would apply to tax reports originally due on or after January 1, 2016.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take

effect September 1, 2015.

**SUPPORTERS
SAY:**

HB 2358 would remove obstacles and unnecessary delays faced by out-of-state businesses that want to enter the state and assist Texans in disaster and emergency relief efforts. Currently, out-of-state businesses interested in providing recovery assistance are subject to all the requirements of permanent Texas businesses, including certain registration, licensing, and tax requirements. This bill would provide exemptions to these requirements that could speed up recovery efforts and facilitate the deployment of individual emergency workers who were engaged in emergency assistance throughout the country.

It would allow out-of-state businesses and employees to quickly respond to disasters when Texas businesses were damaged or in short supply. These services would include restoration of critical infrastructure, reopening of roads, and delivery of needed supplies.

Although the bill would exempt businesses from several requirements, it would limit the scope of those businesses' activities to work that contributes to disaster or emergency relief, and only during a disaster response period. These conditions would be clearly defined in the bill. Any businesses and employees remaining in the state after the disaster period ended would no longer be entitled to any of the exemptions.

The bill would not create any increased risk to public safety by allowing unlicensed employees into the state to assist in disaster recovery. Most individuals who would come into Texas to assist in disaster recovery are employees of service companies that would not require any type of licensing, even in Texas. Since many of the employees are not required to be licensed or undergo a background check in this state, allowing them to come from other states as unlicensed employees would not be creating any increased risk to Texans.

The bill would encourage reciprocity from other states so businesses may assist in rapid disaster recovery wherever an emergency or disaster may occur. This bill is based on model legislation written by the National

Conference of State Legislatures, and many states have passed similar bills. Texas' size and influence could encourage even more states to adopt similar legislation and allow employees to travel between states freely in times of emergency need.

OPPONENTS
SAY:

HB 2358 could negatively affect Texas businesses. Texas companies are required to comply with all business and employee regulations, but this bill would allow out-of-state companies to be exempt from many of those restrictions, putting the state's businesses at a competitive disadvantage.

The bill could create public safety risk. Many business entities and employees would be entering the state during an emergency without being required to follow any licensing or registration requirements. This bill would not require businesses and individuals to be licensed, and some states may not have registration or licensing requirements of their own. While Texas requires fingerprint background checks and registration with the Department of Public Safety, some states have only name-based background checks or require no background checks at all for their businesses and employees. Allowing unlicensed individuals that were not subject to rigorous background checks into the state during a vulnerable disaster period could pose a risk.

The bill also could create concerns that businesses and individuals coming into Texas may not be properly insured, which could be especially problematic given the potential increased risks during a disaster or emergency situation.

Exempting these businesses from certain taxes and fees also would cost the state an estimated \$62.6 million according to the fiscal note. The state has numerous other unmet needs that it should fund before providing this kind of tax break.

NOTES:

HB 2358 would have an estimated negative fiscal impact to general revenue of about \$62.6 million through fiscal 2016-17.

The author plans to introduce a floor amendment that would change the

definition of a disaster response period. A disaster response period would end on the earlier of 120 days after the start date or 60 days after the ending date of the disaster or emergency period; or the period that began on the date an out-of-state business entity entered Texas under a mutual assistance agreement and in anticipation of a state disaster or emergency, regardless of whether a disaster actually occurred, and ended on the earlier of the date when the work was concluded or seven days after the out-of-state business entity entered the state.

The amendment would limit the out-of-state business entities that could benefit from the bill to entities that entered the state at the request of an in-state business under a mutual assistance agreement or were an affiliate of an in-state business entity. It would exclude from the definition of out-of-state employees any employee whose primary function was to provide security services or employees who installed or repaired heating or cooling equipment.

The amendment would exempt out-of-state employees from complying with occupational licensing requirements or fees if the employee were in substantial compliance with occupational licensing requirements in the employee's state of residence or principal employment.