

House File 2440 - Introduced

HOUSE FILE 2440

BY COMMITTEE ON WAYS AND MEANS

(SUCCESSOR TO HSB 617)

A BILL FOR

1 An Act establishing the facilitating business rapid response to
2 state-declared disasters Act, and including effective date
3 and retroactive applicability provisions.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 29C.1, subsection 3, Code 2016, is
2 amended to read as follows:

3 3. To provide for the rendering of mutual aid among the
4 political subdivisions of the state and with other states,
5 ~~and~~ to cooperate with the federal government with respect to
6 the carrying out of emergency management functions, and to
7 ensure the state government and its departments and agencies
8 facilitate the rapid response of businesses and workers in the
9 state and other states to a disaster.

10 Sec. 2. NEW SECTION. **29C.24 Facilitating business rapid**
11 **response to state-declared disasters Act.**

12 1. *Title.* This section may be cited as the "*Facilitating*
13 *Business Rapid Response to State-Declared Disasters Act*".

14 2. *Definitions.* For purposes of this section, unless the
15 context otherwise requires:

16 a. (1) "*Critical infrastructure*" means real and personal
17 property and equipment owned or used by any of the following
18 networks or systems, including related support facilities,
19 which network or system provides service to more than one
20 customer or person:

21 (a) Communication and video networks.

22 (b) Electric generation, transmission, and distribution
23 systems.

24 (c) Gas distribution systems.

25 (d) Water and wastewater pipeline systems.

26 (2) "*Critical infrastructure*" includes but is not limited
27 to buildings, structures, offices, lines, poles, pipes, and
28 equipment.

29 b. "*Declared state disaster or emergency*" means a disaster
30 or emergency event that meets at least one of the following
31 conditions:

32 (1) A disaster emergency proclamation has been issued by the
33 governor pursuant to section 29C.6 in relation to the event.

34 (2) A presidential declaration of a major disaster has been
35 issued in relation to the event.

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

6 *d. "Disaster response period"* means, with respect to
7 each declared state disaster or emergency, a period of time
8 that begins ten calendar days prior to the day the governor
9 proclaims a disaster emergency or the president declares a
10 major disaster, whichever occurs first, and extends for a
11 period of sixty calendar days after the end of the declared
12 state disaster or emergency.

13 *e. (1) "Out-of-state business"* means a business entity that
14 meets all of the following requirements:

15 (i) The business entity is requested to perform disaster or
16 emergency-related work in the state by a registered business or
17 by the state or a political subdivision of the state.

18 (ii) Except for disaster and emergency-related work, the
19 business entity has no presence in the state and conducts no
20 business in the state.

21 (iii) Except for disaster and emergency-related work, the
22 business entity had no registrations, tax filings, or nexus in
23 the state for the tax year immediately preceding the year in
24 which the relevant declared state disaster or emergency occurs.

25 (2) *"Out-of-state business"* may include a business entity
26 that is affiliated with a registered business solely through
27 common ownership.

28 *f. "Out-of-state employee"* means an employee who does
29 not work in this state except to perform disaster or
30 emergency-related work during a disaster response period.

31 *g. "Registered business"* means a business entity that is
32 registered to do business in the state prior to the declared
33 state disaster or emergency.

34 3. *Business and employee status during disaster response*
35 *period.*

1 *a.* Notwithstanding any other provision of law to the
2 contrary, an out-of-state business that conducts operations
3 within the state solely for the purpose of performing disaster
4 or emergency-related work during a disaster response period
5 shall not be considered to have established a level of presence
6 that would subject the out-of-state business to any of the
7 following:

8 (1) The requirement to complete or obtain any state or local
9 registration, license, or similar authorization as a condition
10 of doing business in this state or engaging in an occupation
11 in this state, or to pay any related fee, including but not
12 limited to the requirement to register with the secretary of
13 state or a political subdivision. This subparagraph (1) does
14 not apply to the notification requirement in subsection 5.

15 (2) (a) The requirement to collect and remit any tax
16 imposed upon another person or file any related tax return or
17 obtain any related tax permit. This subparagraph division (a)
18 does not apply to an out-of-state business for the collection
19 and remittance of sales and use taxes under chapter 423 if the
20 out-of-state business is registered voluntarily as a seller
21 under the streamlined sales and use tax agreement.

22 (b) Subparagraph division (a) shall not be construed to
23 protect or otherwise exempt any person liable for the payment
24 of a tax, other than the out-of-state business, from the
25 responsibility to pay such tax.

26 (3) The imposition of income taxes under chapter 422,
27 divisions II and III, including the requirement to file tax
28 returns under sections 422.13 through 422.15 or 422.36, as
29 applicable, and including the requirement to withhold and remit
30 income tax from out-of-state employees under section 422.16.
31 In addition, the performance of disaster or emergency-related
32 work during a disaster response period by an out-of-state
33 business or out-of-state employee shall not require an
34 out-of-state business to be included in a consolidated return
35 under section 422.37, and shall not increase the amount of net

1 income of the out-of-state business allocated and apportioned
2 to the state under sections 422.8 or 422.33, as applicable.

3 (4) The employment security requirements under chapter
4 96, including but not limited to the payment of employer
5 contributions under section 96.7.

6 (5) The use tax under chapter 423, subchapter III, or
7 the equipment tax under chapter 423D, on tangible personal
8 property or equipment purchased outside the state and brought
9 into the state to aid in the performance of disaster or
10 emergency-related work during a disaster response period if
11 such tangible personal property or equipment does not remain in
12 the state after the conclusion of the disaster response period.

13 (6) The assessment of property taxes by the department
14 of revenue under sections 428.24 through 428.26, 428.28, and
15 428.29, or chapters 433, 434, 435, and 437 through 438, or by
16 a local assessor under another provision of law, on property
17 brought into the state to aid in the performance of disaster
18 or emergency-related work during a disaster period if such
19 property does not remain in the state after the conclusion of
20 the disaster response period.

21 *b.* Notwithstanding any other provision of law to the
22 contrary, the performance of disaster or emergency-related
23 work during a disaster response period by an out-of-state
24 employee shall not be used as the basis to determine that the
25 out-of-state employee has established residency or a level of
26 presence that would subject the out-of-state employee to any
27 of the following:

28 (1) The requirement to complete or obtain any state or local
29 registration, license, or similar authorization as a condition
30 of doing business in this state or engaging in an occupation
31 in this state, or to pay any related fee, including but not
32 limited to the requirement to register with the secretary of
33 state or a political subdivision.

34 (2) The imposition of income taxes under chapter 422,
35 division II, including the requirement to file tax returns

1 under section 422.13 and the requirement to be subject to
2 withholding of income tax under section 422.16. In addition,
3 the performance of disaster or emergency-related work during a
4 disaster response period by an out-of-state employee shall not
5 increase the amount of net income of the out-of-state employee
6 allocated and apportioned to the state under section 422.8.

7 (3) The use tax under chapter 423, subchapter III, or the
8 equipment tax under chapter 423D, on tangible personal property
9 or equipment purchased outside the state and used in the state
10 to aid in the performance of disaster or emergency-related work
11 during a disaster response period if such tangible personal
12 property or equipment does not remain in the state after the
13 conclusion of the disaster response period.

14 c. During a disaster response period, an out-of-state
15 business or an out-of-state employee shall be subject to all
16 taxes and fees not included in paragraphs "a" and "b", and this
17 subsection shall not be construed to provide protection or
18 exemption during a disaster response period or any other period
19 from taxes or taxable events not included in paragraphs "a" and
20 "b".

21 4. *Business and employee status after a disaster response*
22 *period.* An out-of-state business or out-of-state employee
23 that remains in the state after the conclusion of the disaster
24 response period for which the disaster or emergency-related
25 work was performed shall be fully subject to the state's
26 standards for establishing presence, residency, or doing
27 business as otherwise provided by law, and shall be responsible
28 for any resulting taxes, fees, licensing, registration, filing,
29 or other requirements.

30 5. *Notification of out-of-state business during disaster*
31 *response period.*

32 a. An out-of-state business that enters the state to perform
33 disaster and emergency-related work during a disaster response
34 period shall provide notification to the secretary of state,
35 which notification shall contain all the following information

1 related to the out-of-state business:

2 (1) Name.

3 (2) State of domicile.

4 (3) Principal business address.

5 (4) Federal employer identification number.

6 (5) The date the out-of-state business entered the state.

7 (6) Contact information.

8 (7) A statement that the out-of-state business is in
9 the state for the purpose of responding to a declared state
10 disaster or emergency.

11 *b.* For an out-of-state business that enters this state to
12 perform disaster and emergency-related work during a disaster
13 response period as an affiliate of a registered business, the
14 registered business shall provide, on behalf of the affiliate
15 out-of-state business, the notification required in paragraph
16 "a", which notification shall also include contact information
17 for the registered business.

18 *c.* The secretary of state shall transmit notification
19 information to the department, department of revenue, and other
20 appropriate state and local government agencies and officials.

21 *6. Powers and duties not created.* This Act shall not be
22 construed to place any new mandates or duties upon a local
23 emergency management commission or create any new authority or
24 power for a local emergency management commission not already
25 expressly granted in another provision of this chapter.

26 *7. Rules.* The department, the secretary of state, and
27 the department of revenue shall each adopt rules pursuant to
28 chapter 17A to jointly administer this section.

29 *Sec. 3.* Section 422.8, subsection 2, paragraph a, Code 2016,
30 is amended to read as follows:

31 *a.* Nonresident's net income allocated to Iowa is the net
32 income, or portion of net income, which is derived from a
33 business, trade, profession, or occupation carried on within
34 this state or income from any property, trust, estate, or
35 other source within Iowa. However, income derived from a

1 business, trade, profession, or occupation carried on within
 2 this state and income from any property, trust, estate, or
 3 other source within Iowa shall not include distributions from
 4 pensions, including defined benefit or defined contribution
 5 plans, annuities, individual retirement accounts, and deferred
 6 compensation plans or any earnings attributable thereto so long
 7 as the distribution is directly related to an individual's
 8 documented retirement and received while the individual is a
 9 nonresident of this state. If a business, trade, profession,
 10 or occupation is carried on partly within and partly without
 11 the state, only the portion of the net income which is fairly
 12 and equitably attributable to that part of the business, trade,
 13 profession, or occupation carried on within the state is
 14 allocated to Iowa for purposes of [section 422.5, subsection 1,](#)
 15 [paragraph "j",](#) and [section 422.13](#) and income from any property,
 16 trust, estate, or other source partly within and partly without
 17 the state is allocated to Iowa in the same manner, except that
 18 annuities, interest on bank deposits and interest-bearing
 19 obligations, and dividends are allocated to Iowa only to the
 20 extent to which they are derived from a business, trade,
 21 profession, or occupation carried on within the state. Net
 22 income described in section 29C.24, subsection 3, paragraph
 23 "a", subparagraph (3), and paragraph "b", subparagraph (2),
 24 shall not be allocated and apportioned to the state, as
 25 provided in section 29C.24.

26 Sec. 4. Section 422.13, Code 2016, is amended by adding the
 27 following new subsection:

28 NEW SUBSECTION. 6. Notwithstanding subsections 1 through 5
 29 and sections 422.14 and 422.15, a return is not required by a
 30 taxpayer as provided in section 29C.24.

31 Sec. 5. Section 422.16, subsection 1, Code 2016, is amended
 32 by adding the following new paragraph:

33 NEW PARAGRAPH. *g.* Individuals described in section 29C.24
 34 are not subject to withholding, as provided in that section.

35 Sec. 6. Section 422.33, subsection 2, paragraph a,

1 subparagraph (2), Code 2016, is amended by adding the following
2 new subparagraph division:

3 NEW SUBPARAGRAPH DIVISION. (Of) Notwithstanding
4 subparagraph division (c), income described in section 29C.24,
5 subsection 3, paragraph "a", subparagraph (3), shall not be
6 allocated and apportioned to the state, as provided in section
7 29C.24.

8 Sec. 7. Section 422.36, Code 2016, is amended by adding the
9 following new subsection:

10 NEW SUBSECTION. 7. Notwithstanding subsection 1, a return
11 is not required by a taxpayer as provided in section 29C.24.

12 Sec. 8. Section 422.37, subsection 2, Code 2016, is amended
13 to read as follows:

14 2. All members of the affiliated group shall join in the
15 filing of an Iowa consolidated return to the extent they
16 are subject to the tax imposed by [section 422.33](#), except as
17 otherwise provided in section 29C.24.

18 Sec. 9. Section 423.6, Code 2016, is amended by adding the
19 following new subsection:

20 NEW SUBSECTION. 17. Tangible personal property exempt from
21 the use tax as provided in section 29C.24.

22 Sec. 10. Section 423.33, subsection 1, Code 2016, is amended
23 to read as follows:

24 1. *Liability of purchaser for sales tax.* If a purchaser
25 fails to pay sales tax to the retailer required to collect the
26 tax, then in addition to all of the rights, obligations, and
27 remedies provided, the tax is payable by the purchaser directly
28 to the department, and [sections 423.31, 423.32, 423.37, 423.38,](#)
29 [423.39, 423.40, 423.41, and 423.42](#) apply to the purchaser. For
30 failure to pay, the retailer and purchaser are liable, unless
31 the circumstances described in section 29C.24, subsection 3,
32 paragraph "a", subparagraph (2), section 421.60, subsection 2,
33 paragraph "m", [section 423.34A](#), or section 423.45, subsection
34 4, paragraph "b" or "e", or [subsection 5](#), paragraph "c" or "e",
35 are applicable.

1 Sec. 11. NEW SECTION. **423.58 Collection, permit, and tax**
2 **return exemption for certain out-of-state businesses.**

3 Notwithstanding sections 423.14, 423.29, 423.31, 423.32, and
4 423.36, a person meeting the requirements of section 29C.24 is
5 not required to obtain a sales or use tax permit, collect and
6 remit sales and use tax, or make and file applicable sales or
7 use tax returns, as provided in section 29C.24, subsection 3,
8 paragraph "a", subparagraph (2).

9 Sec. 12. Section 423D.3, Code 2016, is amended to read as
10 follows:

11 **423D.3 Exemption.**

12 There is exempted from tax imposed by this chapter the
13 following:

14 1. The sales price on the lease or rental of equipment
15 to contractors for direct and primary use in construction ~~is~~
16 ~~exempt from the tax imposed by this chapter.~~

17 2. The sales price or purchase price of equipment exempt
18 from the equipment tax as provided in section 29C.24.

19 Sec. 13. Section 427.1, Code 2016, is amended by adding the
20 following new subsection:

21 NEW SUBSECTION. 41. Property described in and meeting the
22 requirements of section 29C.24, subsection 3, paragraph "a",
23 subparagraph (6).

24 Sec. 14. **EFFECTIVE UPON ENACTMENT.** This Act, being deemed
25 of immediate importance, takes effect upon enactment.

26 Sec. 15. **RETROACTIVE APPLICABILITY.** The following
27 provision or provisions of this Act apply retroactively to
28 January 1, 2016, for tax years beginning on or after that date:

- 29 1. The section of this Act amending section 422.8.
- 30 2. The section of this Act amending section 422.13.
- 31 3. The section of this Act amending section 422.16.
- 32 4. The section of this Act amending section 422.33.
- 33 5. The section of this Act amending section 422.36.
- 34 6. The section of this Act amending section 422.37.

35

EXPLANATION

1 The inclusion of this explanation does not constitute agreement with
2 the explanation's substance by the members of the general assembly.

3 This bill establishes the "Facilitating Business Rapid
4 Response to State-Declared Disasters Act" and provides
5 definitions. The bill also amends the statement of policy in
6 Code chapter 29C (Emergency Management and Security).

7 The bill provides that notwithstanding any law to the
8 contrary, an out-of-state business or an out-of-state employee
9 that performs disaster and emergency-related work during a
10 disaster response period will be protected from, and shall not
11 be subject to, certain taxes, fees, licensing, registration,
12 filing, and other requirements, as specified in the bill.

13 "Disaster response period" is defined as a period of time
14 beginning 10 days before the governor proclaims a state
15 disaster or emergency or the president declares a major
16 disaster in the state, and ends 60 days after the end of
17 the declared state disaster or emergency. "Disaster and
18 emergency-related work" is defined to include a variety of work
19 on critical infrastructure damaged, impaired, or destroyed
20 by the declared state disaster or emergency. "Critical
21 infrastructure" is defined to include property and equipment
22 owned or used by a communication and video network; electric
23 generation, transmission, and distribution system; gas
24 distribution system; water and wastewater pipeline system;
25 or a related support facility of those networks or systems.
26 The network or system must provide service to more than one
27 customer or person. "Critical infrastructure" includes but is
28 not limited to buildings, structures, offices, lines, poles,
29 pipes, and equipment.

30 OUT-OF-STATE BUSINESSES. The bill defines "out-of-state
31 business" and provides that an out-of-state business performing
32 disaster and emergency-related work during a disaster response
33 period shall not be considered to have established a level of
34 presence that would subject it to the following:

35 1. The requirement to obtain any state or local business or

1 registration, license, or similar authorization as a condition
2 of doing business or engaging in an occupation in this state,
3 or pay any related fee.

4 2. The requirement to collect and remit any tax imposed upon
5 another person, or file any related tax return or obtain any
6 related tax permit, except for the collection of sales and use
7 tax by an out-of-state business registered voluntarily as a
8 seller under the streamlined sales and use tax agreement.

9 3. The requirement to pay the individual or corporate
10 income tax, including the requirement to file a tax return
11 or be included in a consolidated tax return, withhold and
12 remit income tax from out-of-state employees, or increase the
13 amount of the out-of-state business's net income allocated
14 and apportioned to Iowa as a result of the disaster and
15 emergency-related work.

16 4. The requirement to be subject to the employment security
17 requirements of Code chapter 96, including but not limited to
18 the requirement to make employer contributions.

19 5. For tangible personal property and equipment purchased
20 outside of Iowa and brought into the state to aid in the
21 performance of disaster or emergency-related work, the
22 requirement to pay use tax or equipment tax on the property, or
23 have the property assessed for property tax purposes, provided
24 the property does not remain in the state after the disaster
25 response period.

26 Out-of-state businesses that enter the state to perform
27 disaster and emergency-related work during a disaster response
28 period are required to provide a notification containing
29 various information to the secretary of state. If the
30 out-of-state business enters the state as an affiliate of a
31 registered business, the registered business must provide the
32 required notification on behalf of the out-of-state business.
33 "Registered business" is defined in the bill. The secretary of
34 state is required to share the notification information with
35 various state and local agencies and officials as specified in

1 the bill.

2 OUT-OF-STATE EMPLOYEES. The bill defines "out-of-state
3 employee" and provides that the performance of disaster or
4 emergency-related work during a disaster response period by
5 an out-of-state employee shall not be used as the basis to
6 determine the out-of-state employee has established residency
7 or a level of presence that would subject the out-of-state
8 employee to the following:

9 1. The requirement to obtain any state or local
10 registration, license, or similar authorization as a condition
11 of doing business or engaging in an occupation in this state,
12 or pay any related fee.

13 2. The requirement to pay the individual income tax or
14 file a tax return, be subject to income tax withholding, or
15 increase the amount of the out-of-state employee's net income
16 allocated and apportioned to Iowa as a result of the disaster
17 and emergency-related work.

18 3. The requirement to pay use tax or equipment tax on
19 tangible personal property and equipment purchased outside of
20 Iowa and brought into the state to aid in the performance of
21 disaster or emergency-related work, provided the property does
22 not remain in the state after the disaster response period.

23 The bill provides that out-of-state businesses and
24 out-of-state employees shall be subject to all taxes and fees
25 not specifically included in the bill, and provides that
26 out-of-state businesses and out-of-state employees that remain
27 in Iowa after the conclusion of the disaster response period
28 shall be fully subject to Iowa's standards for establishing
29 presence, residency, or doing business as otherwise provided by
30 law, and shall be responsible for any resulting taxes, fees,
31 licensing, registration, filing, or other requirements.

32 The bill includes cross references to the tax exclusions
33 and exemptions created in the bill in several sections of the
34 Code relating to the individual and corporate income tax (Code
35 chapter 422), the sales and use tax (Code chapter 423), the

1 equipment tax (Code chapter 423D), and the property tax (Code
2 chapter 427). The cross references to the individual and
3 corporate income tax in Code chapter 422 are retroactive to
4 January 1, 2016, for tax years beginning on or after that date.

5 The bill provides that the "Facilitating Business Rapid
6 Response to State-Declared Disasters Act" shall not be
7 construed to place any new mandates or duties upon a local
8 emergency management commission or create any new authority or
9 power for a local emergency management commission not already
10 expressly provided in another provision of Code chapter 29C
11 (Emergency Management and Security).

12 The bill takes effect upon enactment.