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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 2/9/15  
**LAST UPDATED** 2/17/15     **HB** \_\_\_\_\_

**SPONSOR** Payne W

**SHORT TITLE** Disaster Response Licensure & Taxes     **SB** 465/aSJC

**ANALYST** Graeser

### REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17	FY18	FY19		
	**	**	**	**	Nonrecurring	General Fund (GRT, PIT & CIT)
	**	**	**	**	Nonrecurring	Local Funds (GRT)

(Parenthesis ( ) indicate revenue decreases)

\*\* The potential revenues affected by the provisions of this bill are not estimable. It is not clear that this bill will create a long-term revenue loss. See discussion below.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Department of Health (DOH)

Department of Public Safety (DPS)

Homeland Security and Emergency Management Department (HSEMD)

### SUMMARY

#### Synopsis of SJC Amendment

The Senate Judiciary amendment further qualifies the taxation and licensure relief provisions to clarify that the disaster- or emergency-related work must be on critical infrastructure. Critical infrastructure is defined in the bill.

#### Synopsis of Original Bill

Senate Bill 465 proposes to provide temporary taxation and licensure exemptions for certain out-of-state businesses and individuals who respond to declared disasters within New Mexico. The tax treatment extends to income tax, corporate income tax, gross receipts and compensating taxes and property tax for the temporary duration of the emergency and residency. The bill allows compensation to be allocated to the taxpayer's state of residence. This applies to activities, labor or services performed in this state for disaster or emergency-related work in response to a declared disaster during the disaster response period. The primary focus of this legislation is repair and remediation of property and equipment owned or used by communications networks,

electric generation, transmission and distribution systems and other enumerated utilities. A disaster must be declared by the President, Governor, or another authorized official of the State. The disaster response period is 10 days prior to the declared event and extends 60 calendar days after the declared disaster. An out-of-state business or individual that conducts operations within the state for purposes of performing disaster related work would not be subject to any state licensing or registration requirements. The bill does not include property except for utility property, so that building contractors, roofing contractors and other general businesses not doing work on utility property would not be eligible for this treatment. Apparently, the provisions of the bill do not apply to firefighters or emergency medical personnel, even if employed by the federal government and fully licensed and certified nationally or in their home state.

## **FISCAL IMPLICATIONS**

The revenues involved in this bill are intrinsically non-recurring and largely not estimable. Disasters occur, of course, but when they occur, how large they are and what proportion of the control and remediation effort is State-based and what proportion are delivered by out-of-state resident individuals and firms is highly speculative. The larger the scope of the disaster, the more likely the payments to the responders will be from federal sources.

In addition (and also applicable to firefighters, wildland firefighters and emergency medical personnel) 7-2-11 NMSA 1978 allows such individuals to allocate wages and other payments to their home state, provided that the duration of the emergency assignment is for 15 days or less during a taxable year. Most of the individual and business income is already not taxable in the state.

While federal law permits host states to tax the wages and business income of non-resident individuals and businesses, any tax imposed on this source of income by the state in which the services are provided must be credited against the resident host state tax liability. As more states adopt this type of disaster response exemption legislation, allocating the income of our New Mexico disaster response crews and other responders may make up for any short-term revenue losses.

It is not clear whether this bill creates a tax expenditure. It can be argued that the bill simply defines the tax base. Most experts would agree with the proposition that payments to non-resident responders during the time of a disaster is not an appropriate tax base.

## **SIGNIFICANT ISSUES**

HSEMD notes that this bill will be beneficial to businesses, such as utility companies, that are based in other states and work briefly in New Mexico to repair infrastructure during or immediately after a declared disaster or emergency that require immediate attention. The provisions of this bill could also be beneficial to federal fire fighters and Emergency Management Assistance Compact (EMAC) responders, who come into the state to conduct response or recovery activities for a limited period of time.

The taxation provisions are largely negligible because of the action of 7-2-11 NMSA 1978. The relief from regulatory and New Mexico licensure requirements is probably of more use than the tax provisions in ensuring rapid responses.

DOH similarly notes that the bill would create a quicker, and probably more willing, response from out of state contractors who provide disaster relief and response assistance within the State.

DOH is moderately concerned that the responders coming to a disaster scene should have an equivalent level of licensure to that required of New Mexico responders. DOH recommends that the bill include a requirement for the income and gross receipts tax exemptions be other-state or national licensure and certification for individuals whose job duties, if performed by a New Mexico resident, would require New Mexico or national licensure or certification. This would not apply to utility workers, but would apply to firefighters, wildland firefighters and emergency medical personnel.

### **PERFORMANCE IMPLICATIONS**

HSEMD notes that the timelines described within the bill seem appropriate to define disaster response and recovery activities versus normal business operations.

The effective date of the act is not stated – assume 90 days after adjournment or June 19, 2019. It might be more administrable to establish an effective date of July 1, 2015 so that TRD could administer the provisions applicable to the Gross Receipts and Compensating Tax Act in its regular cycle. There are no sunset dates or accountability provisions. Because this bill redefines the appropriate tax base, it would be very difficult for TRD or HSEMD to determine the revenue cost of this measure.

DOH notes that the EMS Bureau of DOH will continue to validate the credentials of medical first responders, since the provisions of this bill do not include these responders. States have on-line access to credentials, which the staff at the bureau we would check when there is a disaster with out of state response. However, if the conditions are such that it requires out-of-state resources, the incident would be managed by a federal agency (FEMA or CDC). Federal coordination usually involves resources, such as Disaster Medical Assistance Teams (DMAT), and those teams are required to validate credentials for membership and deployment.

The LFC tax policy of accountability is not met since TRD is not required in the bill to report annually to an interim legislative committee regarding the data compiled from the reports from taxpayers taking advantage of the provision and other information to determine whether the deduction is meeting its purpose. The bill simply defines the tax base to exclude payments made to individuals and businesses for the duration of an emergency.

### **TECHNICAL ISSUES**

The provisions of the bill could be expanded to provide taxation, licensure and regulatory relief in disaster situations for firefighters, wildland firefighters and emergency medical personnel. DOH advises that these emergency responders should be licensed in their home state or should have national licensure or certification.

### **OTHER SUBSTANTIVE ISSUES**

The provisions of the bill do not cover “general business” individual enterprises and individuals whose primary business is to enter the state to solicit repair work (for example, roofing contractors, builders, fire and flood recovery and repair companies and so on.).

Out-of-state individuals and businesses are still responsible for paying New Mexico fuel taxes and for reimbursing vendors for their transaction taxes on the in-state purchase of good and

services. Any individual or business currently filing a gross receipts tax return or income tax return in the state would not be exempt under the provisions of this bill.

Alabama, Arizona, Georgia, Utah, South Carolina and Missouri have enacted similar measures.

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