Effective September 1, 2015, the Texas Legislature amended the Business & Commerce Code by adding the Facilitating Business Rapid Response to State Declared Disasters Act ("Act") [available at http://www.legis.state.tx.us/tlodocs/84R/billtext/html/HB02358F.htm]. This legislation aims to expedite response and recovery efforts following disasters or emergencies in Texas. The primary vehicle behind the Act’s intent is reducing traditional requirements on out-of-state businesses that wish to perform disaster or emergency-related work. Under the Act, out-of-state businesses performing qualified services are not required to:

- Register with the secretary of state;
- File a tax report or pay taxes to the state;
- Comply with state or local business licensing or registration requirements; or
- Comply with state or local occupational licensing requirements or related fees.

Concerns have emerged about whether the Act waives tax, licensing, and registration requirements for an out-of-state contractor who performs any type of repair work. The Act simply does not provide for such a broad interpretation. Both the text and legislative history of the Act ensure that the legislation targets a specific category of services: public utilities.

The new legislation applies to disaster or emergency-related work, which are those business activities “relating to the repair or replacement of critical infrastructure that has been damaged, impaired, or destroyed by a declared state disaster or emergency.” The legislative findings of the Act make it clear that out-of-state registration and licensing requirements are only exempted for work on critical infrastructure. The Act sets forth an explanation of what qualifies as “critical infrastructure: “Critical infrastructure” means equipment and property that is owned or used by a telecommunications provider or cable operator or for communications networks, electric generation, electric transmission and distribution systems, natural gas and natural gas liquids gathering, processing, and storage, transmission and distribution systems, and water pipelines and related support facilities, equipment, and property that serve multiple persons, including buildings, offices, structures, lines, poles, and pipes.

In short, the Texas Legislature declared critical infrastructure synonymous with public utility services. Out-of-state businesses are exempted from licensing and registration requirements only when performing repairs on telecommunication, cable, electric, gas and water systems. For example, the Act would not waive any licensing and registration requirements for an out-of-state private contractor wishing to repair a roof during a declared state disaster or emergency.

Further, the witness list from the House Committee Report is entirely comprised of representatives from utility service provider representatives. Those who testified in favor of the bill spoke on behalf of their respective phone, cable, internet, electricity, and gas companies. This further cements the position that the Act’s applicability is limited to out-of-state businesses making repairs on public utility services. Accordingly, it is clear that the legislation is limited in scope, applying only to repairs performed on public utility services. Taxes, licensing, and registration in other construction areas, including roofing, remain unaffected by this legislation.

For additional information contact Tyler McGuire  
214/742-3000  
tmcguire@zelle.com