

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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HOUSE BILL 538*

Short Title: Facilitate Response to Disasters. (Public)

Sponsors: Representatives Howard, Setzer, and Szoka (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Finance, if favorable, Rules, Calendar, and Operations of the House

April 3, 2019

1 A BILL TO BE ENTITLED
2 AN ACT TO FACILITATE RAPID RESPONSE TO STATE DECLARED DISASTERS BY
3 EXEMPTING CERTAIN BUSINESSES AND EMPLOYEES FROM REGISTRATION
4 AND TAX LAWS DURING THE DISASTER RESPONSE PERIOD.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** Part 8 of Article 166A of the General Statutes is amended by adding a
7 new section to read:

8 "**§ 166A-19.70A. Tax and business relief for critical infrastructure businesses and**
9 **employees during a disaster response period.**

10 (a) Purpose. – The State finds that it is appropriate to exempt from certain State laws
11 businesses and employees who come from out-of-state to provide temporary resources and
12 personnel to assist in disaster-related work related to critical infrastructure in response to a
13 disaster declaration.

14 (b) Definitions. – In addition to the definitions in G.S. 166A-19.3, the following
15 definitions apply in this section:

16 (1) Critical infrastructure. – Property and equipment owned or used by a critical
17 infrastructure company for utility or communications transmission services to
18 the public in the State. Examples of critical infrastructure include
19 communications networks, electric generation, transmission and distribution
20 systems, natural gas transmission and distribution systems, water pipelines,
21 and related support facilities. Related support facilities may include buildings,
22 offices, lines, poles, pipes, structures, and equipment.

23 (2) Critical infrastructure company. – One of the following:

24 a. A registered public communications provider.

25 b. A registered public utility.

26 (3) Disaster-related work. – Repairing, renovating, installing, building, or
27 performing services on critical infrastructure that has been damaged,
28 impaired, or destroyed as a result of a disaster or emergency in an area covered
29 by the disaster declaration.

30 (4) Disaster response period. – A period that begins ten days prior to the first day
31 of a disaster declaration and extends for 60 days following the expiration of
32 the disaster declaration.

33 (5) Out-of-state business. – A person that, except with regard to the performance
34 of disaster-related work, meets all of conditions of this subdivision. The term



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1 may include an affiliate or subsidiary of a critical infrastructure company. The
2 conditions are as follows:

- 3 a. Has no physical presence in the State.
- 4 b. Does not conduct business operations in this State.
- 5 c. Is not registered with any State agency to conduct business in the State.
- 6 d. Has not been required to file any tax returns with the State for three
7 years prior to the disaster response period, other than those arising
8 from the performance of disaster-related work during a tax year prior
9 to the enactment of this section.

10 (6) Out-of-state employee. – A nonresident who is an employee of an out-of-state
11 business entitled to relief under subsection (c) of this section or a nonresident
12 employee of a critical infrastructure company temporarily in the State to
13 perform disaster-related work during the disaster response period. The term
14 does not include a nonresident who otherwise works in this State.

15 (7) Registered public communications provider. – A person registered to conduct
16 business in this State prior to the disaster declaration that provides the
17 transmission to the public of one or more of the following:

- 18 a. Broadband.
- 19 b. Mobile telecommunications.
- 20 c. Telecommunications.
- 21 d. Wireless internet access

22 (8) Registered public utility. – A person registered to conduct business in this
23 State prior to the disaster declaration that is subject to control of one or more
24 of the following entities:

- 25 a. North Carolina Utilities Commission.
- 26 b. Federal Communications Commission.
- 27 c. Federal Energy Regulatory Commission.

28 (c) State Relief for Out-of-State Business. – An out-of-state business performing
29 disaster-related work in this State during a disaster response period at the request of a critical
30 infrastructure company is not considered to be conducting business in this State, and as such is
31 exempt from the following statutory requirements:

- 32 (1) Franchise tax, as provided under G.S. 105-125.
- 33 (2) Income tax, as provided under G.S. 105-130.11.
- 34 (3) S-corporation income tax, as provided under G.S. 105-131.7.
- 35 (4) Information returns, as provided under G.S. 105-154(a).
- 36 (5) Unemployment tax, as provided under G.S. 96-9.2.
- 37 (6) Workers' compensation, as provided under G.S. 97-13.
- 38 (7) Registration with the Secretary of State to transact business in this State, as
39 provided under G.S. 55-1-51.

40 (d) State Relief for Out-of-State Employee. – An out-of-state employee is not required to
41 pay State income tax, or file an income tax return, on earnings received for disaster-related work
42 performed during a disaster response period, as provided in G.S. 105-153.4(f) and
43 G.S. 105-153.8(a)(2). The employer of an out-of-state employee is not required to withhold
44 income tax from the wages of the employee, as provided in G.S. 105-163.2(f).

45 (e) Notification. – A critical infrastructure company that requests an out-of-state business
46 to perform disaster-related work in this State during the disaster response period must notify the
47 State Emergency Response Team within (30) business days of the out-of-state business's entry
48 into the State of the business's presence in the State. The notification must include the contact
49 information of the critical infrastructure company that requested the presence of the out-of-state
50 business as well as the following information about the out-of-state business: name, state of
51 domicile, principal business address, federal tax identification number, date of entry, and any

1 other information required by the State Emergency Response Team. The State Emergency
2 Response Team must disseminate the information to the appropriate State agencies. Failure of
3 the critical infrastructure company to provide this information in a timely manner does not
4 invalidate the relief provided by this section so long as the company provides it to the appropriate
5 State agency upon request.

6 (f) Limitation. – The exemptions from the State laws provided by this section cease to
7 apply when the disaster response period expires. An out-of-state business or out-of-state
8 employee that remains in the State after the disaster response period expires must abide by all
9 State and local registration, license, and filing requirements that apply to any other out-of-state
10 business and out-of-state employee doing business in this State."

11 **SECTION 2.(a)** Article 1 of Chapter 55 of the General Statutes is amended by adding
12 a new section to read:

13 **"§ 55-1-51. Exemption for disaster relief.**

14 (a) Critical Infrastructure. – In accordance with the policy established in
15 G.S. 166A-19.70A, an out-of-state business performing disaster-related work in this State during
16 a disaster response period at the request of a critical infrastructure company is not required to
17 obtain a certificate of authority from the Secretary of State as otherwise required under
18 G.S. 55-15-01.

19 (b) Motor Fuel. – A person issued a temporary license by the Department of Revenue
20 under G.S. 105-449.69A to import, export, distribute, or transport motor fuel in this State in
21 response to a disaster declaration is not required to obtain a certificate of authority from the
22 Secretary of State to transact business in this State for the duration of the temporary license."

23 **SECTION 2.(b)** G.S. 96-9.2(a) reads as rewritten:

24 "(a) Required Contribution. – An employer is required to make a contribution in each
25 calendar year to the Unemployment Insurance Fund in an amount equal to the applicable
26 percentage of the taxable wages the employer pays its employees during the year for services
27 performed in this State. An employer may not deduct the contributions due in whole or in part
28 from the remuneration of the individuals employed. Taxable wages are determined in accordance
29 with G.S. 96-9.3. The applicable percentage for an employer is considered the employer's
30 contribution rate and determined in accordance with this section.

31 In accordance with the policy established in G.S. 166A-19.70A, an out-of-state business
32 performing disaster-related work in this State during a disaster response period at the request of
33 a critical infrastructure company is exempt from the provisions of this Chapter. The definitions,
34 provisions, and limitations in G.S. 166A-19.70A apply in this section."

35 **SECTION 2.(c)** G.S. 97-13 is amended by adding a new subsection to read:

36 **"§ 97-13. Exceptions from provisions of Article.**

37 (e) Disaster Relief. – In accordance with the policy established in G.S. 166A-19.70A, an
38 out-of-state business performing disaster-related work in this State during a disaster response
39 period at the request of a critical infrastructure company is exempt from the provisions of this
40 Chapter. The definitions, provisions, and limitations in G.S. 166A-19.70A apply in this
41 subsection."

42 **SECTION 2.(d)** G.S. 105-125(a) is amended by adding a new subdivision to read:

43 **"§ 105-125. Exempt corporations.**

44 (a) Exemptions. – The following corporations are exempt from the taxes levied by this
45 Article. Upon request of the Secretary, an exempt corporation must establish its claim for
46 exemption in writing:

47 ...

48 (9) In accordance with the policy established in G.S. 166A-19.70A, an
49 out-of-state business performing disaster-related work in this State during a
50 disaster response period at the request of a critical infrastructure company is

1 exempt from the provisions of this Article. The definitions, provisions, and
2 limitations in G.S. 166A-19.70A apply in this subdivision."

3 **SECTION 2.(e)** G.S. 105-130.11(a) is amended by adding a new subdivision to read:

4 "(a) Exempt Organizations. – Except as provided in subsections (b) and (c), the following
5 organizations and any organization that is exempt from federal income tax under the Code are
6 exempt from the tax imposed under this Part.

7 ...

8 (12) In accordance with the policy established in G.S. 166A-19.70A, an
9 out-of-state business performing disaster-related work in this State during a
10 disaster response period at the request of a critical infrastructure company is
11 exempt from the provisions of this Part. The definitions, provisions, and
12 limitations in G.S. 166A-19.70A apply in this subdivision."

13 **SECTION 2.(f)** G.S. 105-131.7(a) reads as rewritten:

14 "(a) An S Corporation incorporated or doing business in the State shall file with the
15 Department an annual return, on a form prescribed by the Secretary, on or before the due date
16 prescribed for the filing of C Corporation returns in G.S. 105-130.17. The return shall show the
17 name, address, and social security or federal identification number of each shareholder, income
18 attributable to the State and the income not attributable to the State with respect to each
19 shareholder as defined in G.S. 105-131(b)(4) and (5), and such other information as the Secretary
20 may require.

21 In accordance with the policy established in G.S. 166A-19.70A, an S Corporation that is an
22 out-of-state business performing disaster-related work in this State during a disaster response
23 period at the request of a critical infrastructure company is not required to file an annual return
24 for income derived for the work performed during this period. The definitions, provisions, and
25 limitations in G.S. 166A-19.70A apply to this subsection."

26 **SECTION 2.(g)** G.S. 105-153.4 is amended by adding a new subsection to read:

27 "**§ 105-153.4. North Carolina taxable income defined.**

28 ...

29 (f) Disaster Relief Tax Exclusion. – In accordance with the policy established in
30 G.S. 166A-19.70A, an out-of-state business and an out-of-state employee performing
31 disaster-related work in this State during a disaster response period at the request of a critical
32 infrastructure company is not considered to be conducting business in this State for the work
33 performed during this period. The definitions, provisions, and limitations in G.S. 166A-19.70A
34 apply to this subsection. Accordingly, North Carolina taxable income, for purposes of this Part,
35 does not include the following:

36 (1) Nonresident employee. – The earnings paid to an out-of-state employee.

37 (2) S Corporations shareholders. – A shareholder's pro rata share of S Corporation
38 income if the income is attributable to work performed by the S Corporation
39 as an out-of-state business performing disaster-related work in this State
40 during a disaster response period at the request of a critical infrastructure
41 company.

42 (3) Partners and members of unincorporated business. – The amount of a partner's
43 or member's distributive share of the total net income of the business of a
44 partnership or another unincorporated business if the income is attributable to
45 work performed by an out-of-state business performing disaster-related work
46 in this State during a disaster response period at the request of a critical
47 infrastructure company."

48 **SECTION 2.(h)** G.S. 105-153.8(a)(2) reads as rewritten:

49 "**§ 105-153.8. Income tax returns.**

50 (a) Who Must File. – The following individuals must file with the Secretary an income
51 tax return under affirmation:

- 1 ...
- 2 (2) Every nonresident individual who ~~meets all of the following requirements:~~(i)
- 3 has gross income under the Code that exceeds the applicable standard
- 4 deduction amount provided in G.S. 105-153.5(a)(1) and (ii) receives
- 5 a. ~~Receives~~ during the taxable year gross income that is derived from
- 6 North Carolina sources and is attributable to the ownership of any
- 7 interest in real or tangible personal property in this State, is derived
- 8 from a business, trade, profession, or occupation carried on in this
- 9 State, or is derived from gambling activities in this State. This
- 10 subdivision does not apply to a nonresident individual who is not
- 11 subject to withholding under G.S. 105-163.2(f).
- 12 b. ~~Has gross income under the Code that exceeds the applicable standard~~
- 13 ~~deduction amount provided in G.S. 105-153.5(a)(1).~~

14"

15 **SECTION 2.(i)** G.S. 105-154(c) reads as rewritten:

16 "(c) Information Returns of Partnerships. – A partnership doing business in this State and

17 required to file a return under the Code shall file an information return with the Secretary. A

18 partnership that the Secretary believes to be doing business in this State and to be required to file

19 a return under the Code shall file an information return when requested to do so by the Secretary.

20 The information return shall contain all information required by the Secretary. It shall state

21 specifically the items of the partnership's gross income, the deductions allowed under the Code,

22 each partner's distributive share of the partnership's income, and the adjustments required by this

23 Part. A partner's distributive share of partnership net income includes any guaranteed payments

24 made to the partner. The information return shall also include the name and address of each

25 person who would be entitled to share in the partnership's net income, if distributable, and the

26 amount each person's distributive share would be. The information return shall be signed by one

27 of the partners under affirmation in the form required by the Secretary.

28 A partnership that files an information return under this subsection shall furnish to each

29 person who would be entitled to share in the partnership's net income, if distributable, any

30 information necessary for that person to properly file a State income tax return. The information

31 shall be in the form prescribed by the Secretary and must be furnished on or before the due date

32 of the information return.

33 In accordance with the policy established in G.S. 166A-19.70A, a partnership that is an

34 out-of-state business performing disaster-related work in this State during a disaster response

35 period at the request of a critical infrastructure company is not required to file an information

36 return for income derived for the work performed during this period. The definitions, provisions,

37 and limitations in G.S. 166A-19.70A apply to this subsection."

38 **SECTION 2.(j)** G.S. 105-163.2 reads as rewritten:

39 **"§ 105-163.2. Employers must withhold taxes.**

40 (a) Withholding Required. – ~~An~~ Except as provided in subsection (f) of this section, an

41 employer shall deduct and withhold from the wages of each employee the State income taxes

42 payable by the employee on the wages. For each payroll period, the employer shall withhold

43 from the employee's wages an amount that would approximate the employee's income tax

44 liability under Article 4 of this Chapter if the employer withheld the same amount from the

45 employee's wages for each similar payroll period in a calendar year. In calculating an employee's

46 anticipated income tax liability, the employer shall allow for the additions that employee is

47 required to make under Article 4 of this Chapter and the deductions, and credits to which the

48 employee is entitled under Article 4 of this Chapter. The amount of State income taxes withheld

49 by an employer is held in trust for the Secretary.

50 ...

1 (f) Nonresident Disaster Relief Employees. – In accordance with the policy established
2 in G.S. 166A-19.70A, an employer is not required to withhold from the wages of its out-of-state
3 employees the State income taxes that may otherwise apply for disaster-related work performed
4 in this State during a disaster response period. The definitions, provisions, and limitations in
5 G.S. 166A-19.70A apply in this subsection."

6 **SECTION 3.** G.S. 105-130.5(a) is amended by adding a new subdivision to read:

7 (a) The following additions to federal taxable income shall be made in determining State
8 net income:

9 ...

10 (30) Payments made to a related party that is not subject to tax under this Chapter
11 in accordance with the policy established in G.S. 166A-19.70A, to the extent
12 the payments are deducted in determining federal taxable income. For
13 purposes of this subdivision, the term "related entity" has the same meaning
14 as in G.S. 105-130.7A(b)(4)."

15 **SECTION 4.** Part 2 of Article 36B of Chapter 105 of the General Statutes is amended
16 by adding a new section to read:

17 **"§ 105-449.69A. Temporary license during disaster response period.**

18 (a) Temporary License. – The Secretary may grant a temporary license to an applicant to
19 import, export, distribute, or transport motor fuel in this State in response to a disaster declaration.
20 The term "disaster declaration" has the same meaning as defined in G.S. 166A-19.3. The
21 temporary license expires upon the expiration of the disaster declaration. A temporary license
22 issued under this section may not be renewed or a new temporary license granted if the licensee
23 failed to file the required returns or make payments of the required taxes.

24 (b) Requirements. – To obtain a temporary license, a person must file an application with
25 the Secretary on a form prescribed by the Secretary within seven calendar days from the date of
26 the disaster declaration. An application must include all of the following information:

27 (1) The legal name of the business and the trade name, if applicable, under which
28 the person will transact business within the State.

29 (2) The federal identification number of the business or, if such number is
30 unavailable, the social security number of the owner.

31 (3) The location, with a street number address, of the principal office or place of
32 business and the location where records will be made available for inspection.

33 (4) Any other information required by the Secretary.

34 (c) Exceptions. – The Secretary may issue a temporary license under this section as an
35 importer, exporter, distributor, or transporter without requiring the applicant to file with the
36 Secretary a bond or an irrevocable letter of credit, as otherwise required by G.S. 105-449.72, and
37 without requiring the applicant to be authorized to transact business in this State with the
38 Secretary of State."

39 **SECTION 5.** This act is effective when it becomes law and applies to taxable years
40 beginning on or after January 1, 2019.