

GENERAL ASSEMBLY OF NORTH CAROLINA  
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SENATE BILL 498  
PROPOSED COMMITTEE SUBSTITUTE S498-PCS15386-RBf-17

Short Title: Facilitate Response to Disasters.

(Public)

Sponsors:

Referred to:

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.(a) Part 8 of Article 1A of Chapter 166A of the General Statutes is  
7 amended by adding a new section to read:

8 "**§ 166A-19.70A. Facilitate critical infrastructure disaster relief.**

9 (a) Purpose. – The State finds that it is appropriate to exclude nonresident businesses and  
10 nonresident employees who temporarily come to this State at the request of a critical  
11 infrastructure company solely to perform disaster-related work during a disaster response period  
12 from the following tax and regulatory requirements:

13 (1) Corporate and individual income tax, as provided under G.S. 105-130.1 and  
14 G.S. 105-153.2.

15 (2) Franchise tax, as provided under G.S. 105-114.

16 (3) Unemployment tax, as provided under G.S. 96-1(b)(12).

17 (4) Certificate of Authority from the Secretary of State to transact business in  
18 this State, as provided under G.S. 55-15-01(d) and G.S. 57D-1-24(d).

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

21 (1) Corporation. – Defined in G.S. 105-130.2.

22 (2) Critical infrastructure. – Property and equipment owned or used by a critical  
23 infrastructure company for utility or communications transmission services  
24 provided to the public in the State. Examples of critical infrastructure include  
25 communications networks, electric generation, transmission and distribution  
26 systems, natural gas transmission and distribution systems, water pipelines,  
27 and related support facilities. Related support facilities may include buildings,  
28 offices, lines, poles, pipes, structures, and equipment.

29 (3) Critical infrastructure company. – One of the following:

30 a. A registered public communications provider.

31 b. A registered public utility.

32 (4) Disaster-related work. – Repairing, renovating, installing, building, or  
33 performing services on critical infrastructure that has been damaged,  
34 impaired, or destroyed as a result of a disaster or emergency in an area covered  
35 by the disaster declaration.



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- 1           (5)   Disaster response period. – A period that begins 10 days prior to the first day  
2           of a disaster declaration and expires on the earlier of the following:  
3           a.     Sixty days following the expiration of the disaster declaration, as  
4           provided under G.S. 166A-19.21(c).  
5           b.     One hundred eighty days following the issuance of the disaster  
6           declaration.
- 7           (6)   Employee. – Defined in G.S. 105-163.1.
- 8           (7)   Nonresident business. – An entity that has not been required to file an income  
9           or franchise tax return with the State for three years prior to the disaster  
10          response period, other than those arising from the performance of  
11          disaster-related work during a tax year prior to the enactment of this section,  
12          and that meets one or more of the following conditions:  
13          a.     Is a nonresident entity.  
14          b.     Is a nonresident individual who owns an unincorporated business as a  
15          sole proprietor.
- 16          (8)   Nonresident employee. – A nonresident individual who is one of the  
17          following:  
18          a.     An employee of a nonresident business.  
19          b.     An employee of a critical infrastructure company who is temporarily  
20          in this State to perform disaster-related work during a disaster response  
21          period.
- 22          (9)   Nonresident entity. – Defined in G.S. 105-163.1.
- 23          (10)   Nonresident individual. – Defined in G.S. 105-153.3.
- 24          (11)   Registered public communications provider. – A corporation doing business  
25          in this State prior to the disaster declaration that provides the transmission to  
26          the public of one or more of the following:  
27          a.     Broadband.  
28          b.     Mobile telecommunications.  
29          c.     Telecommunications.  
30          d.     Wireless Internet access.
- 31          (12)   Registered public utility. – A corporation doing business in this State prior to  
32          the disaster declaration that is subject to the control of one or more of the  
33          following entities:  
34          a.     North Carolina Utilities Commission.  
35          b.     North Carolina Rural Electrification Authority.  
36          c.     Federal Communications Commission.  
37          d.     Federal Energy Regulatory Commission.
- 38          (c)   Critical Infrastructure Company Notification. – A critical infrastructure company  
39          must provide notification to the Department of Revenue within 90 days of the expiration of the  
40          disaster response period. The notification must be in the form and manner required by the  
41          Department. The notification must include the following:  
42          (1)   A list of all nonresident businesses who performed disaster-related work in  
43          this State during a disaster response period at the request of the critical  
44          infrastructure company.  
45          (2)   A list of nonresident employees who performed disaster-related work in this  
46          State for the critical infrastructure company during a disaster response period.  
47          The notification must include the amount of compensation paid to the  
48          nonresident employee performing disaster-related work in this State.
- 49          (d)   Nonresident Business Notification. – A nonresident business must provide  
50          notification to the Department of Revenue within 90 days of the date the nonresident business  
51          concludes its disaster-related work in the State. The notification must be in the form and manner

1 required by the Department. The notification must include a list of nonresident employees who  
2 performed disaster-related work in this State during a disaster response period, along with the  
3 amount of compensation paid to the nonresident employee performing disaster-related work in  
4 this State. Failure to submit a timely notification forfeits the relief provided by this section for  
5 the nonresident business.

6 (e) Limitation. – The intent of this section is to provide relief to nonresident businesses  
7 and nonresident employees who would not otherwise be subject to this State's tax and regulatory  
8 requirements if they had not performed disaster-related work during the disaster response period.  
9 The relief provided under this section does not apply to any tax year that is part of the disaster  
10 response period if the nonresident business or nonresident employee continues to perform  
11 disaster-related work following the end of the disaster response period. The relief provided under  
12 this section does not apply to a tax year that is part of the disaster response period if the  
13 nonresident business or nonresident employee is required to file an income tax return for that tax  
14 year with the Department of Revenue for reasons other than the performance of disaster-related  
15 work."

16 **SECTION 1.(b)** G.S. 55-15-01 is amended by adding a new subsection to read:

17 "(e) The following foreign corporations are not required to obtain a certificate of authority  
18 from the Secretary of State:

19 (1) A nonresident business solely performing disaster-related work in this State  
20 during a disaster response period at the request of a critical infrastructure  
21 company. The definitions and provisions of G.S. 166A-19.70A apply to this  
22 subdivision.

23 (2) A person issued a temporary license by the Department of Revenue under  
24 G.S. 105-449.69A to import, export, distribute, or transport motor fuel in this  
25 State in response to a disaster declaration."

26 **SECTION 1.(c)** G.S. 57D-1-24 reads as rewritten:

27 **"§ 57D-1-24. Certificate of existence; certificate of authorization.**

28 ...

29 (d) A nonresident business solely performing disaster-related work in this State during a  
30 disaster response period at the request of a critical infrastructure company is not required to  
31 obtain a certificate of authority from the Secretary of State. The definitions and provisions of  
32 G.S. 166A-19.70A apply to this subsection."

33 **SECTION 1.(d)** G.S. 96-1(b)(12) reads as rewritten:

34 **"(b) Definitions. – The following definitions apply in this Chapter:**

35 ...

36 **(12) Employment. – Defined in section 3306 of the Code, with the following**  
37 **additions and exclusions:**

38 ...

39 **b. Exclusions. – The term excludes all of the following:**

40 ...

41 **5. Service performed by a nonresident employee for a**  
42 **nonresident business performing disaster-related work in this**  
43 **State during a disaster response period at the request of a**  
44 **critical infrastructure company. The definitions and provisions**  
45 **of G.S. 166A-19.70A apply to this exclusion."**

46 **SECTION 1.(e)** G.S. 105-114 is amended by adding a new subsection to read:

47 "(d) Critical Infrastructure Disaster Relief. – A nonresident business that solely performs  
48 disaster-related work in this State during a disaster response period at the request of a critical  
49 infrastructure company is not considered to be doing business in this State for purposes of this  
50 Article. The definitions and provisions in G.S. 166A-19.70A apply in this subsection."

51 **SECTION 1.(f)** G.S. 105-130.1 reads as rewritten:

1 **"§ 105-130.1. Purpose.**

2 (a) Purpose. – The general purpose of this Part is to impose a tax for the use of the State  
3 government upon the net income of every domestic corporation and of every foreign corporation  
4 doing business in this State.

5 The tax imposed upon the net income of corporations in this Part is in addition to all other  
6 taxes imposed under this Subchapter.

7 (b) Critical Infrastructure Disaster Relief. – A nonresident business that solely performs  
8 disaster-related work in this State during a disaster response period at the request of a critical  
9 infrastructure company is not considered to be doing business in this State for purposes of this  
10 Part. The definitions and provisions in G.S. 166A-19.70A apply in this subsection."

11 **SECTION 1.(g)** G.S. 105-130.5(a) reads as rewritten:

12 "(a) The following additions to federal taxable income shall be made in determining State  
13 net income:

14 ...

15 (30) Payments made to an affiliate or subsidiary that is not subject to tax under this  
16 Article pursuant to the exceptions for critical infrastructure disaster relief  
17 provided under G.S. 166A-19.70A, to the extent the payments are deducted in  
18 determining federal taxable income. The definitions and provisions of  
19 G.S. 166A-19.70A apply to this subdivision."

20 **SECTION 1.(h)** G.S. 105-131.7 reads as rewritten:

21 **"§ 105-131.7. Returns; shareholder agreements; mandatory withholding.**

22 ...

23 (f) Critical Infrastructure Disaster Relief. – An S Corporation that is not doing business  
24 in this State because it is a nonresident business performing disaster-related work during a  
25 disaster response period at the request of a critical infrastructure company is not required to file  
26 a return with the Department. However, the corporation must furnish to each shareholder who  
27 would be entitled to share in the corporation income any information necessary for that person  
28 to properly file a State income tax return. The definitions and provisions in G.S. 166A-19.70A  
29 concerning disaster-related work apply to this subsection."

30 **SECTION 1.(i)** G.S. 105-154(c) reads as rewritten:

31 **"§ 105-154. Information at the source returns.**

32 ...

33 (c) Information Returns of Partnerships. – A partnership doing business in this State and  
34 required to file a return under the Code shall file an information return with the Secretary. A  
35 partnership that the Secretary believes to be doing business in this State and to be required to file  
36 a return under the Code shall file an information return when requested to do so by the Secretary.  
37 The information return shall contain all information required by the Secretary. It shall state  
38 specifically the items of the partnership's gross income, the deductions allowed under the Code,  
39 each partner's distributive share of the partnership's income, and the adjustments required by this  
40 Part. A partner's distributive share of partnership net income includes any guaranteed payments  
41 made to the partner. The information return shall also include the name and address of each  
42 person who would be entitled to share in the partnership's net income, if distributable, and the  
43 amount each person's distributive share would be. The information return shall be signed by one  
44 of the partners under affirmation in the form required by the Secretary.

45 A partnership that files an information return under this subsection shall furnish to each  
46 person who would be entitled to share in the partnership's net income, if distributable, any  
47 information necessary for that person to properly file a State income tax return. The information  
48 shall be in the form prescribed by the Secretary and must be furnished on or before the due date  
49 of the information return.

50 A partnership that is not doing business in this State because it is a nonresident business  
51 performing disaster-related work during a disaster response period at the request of a critical

1 infrastructure company is not required to file an information return with the Secretary. However,  
2 the partnership must furnish to each person who would be entitled to share in the partnership's  
3 net income, if distributable, any information necessary for that person to properly file a State  
4 income tax return. The definitions and provisions in G.S. 166A-19.70A apply to this paragraph."

5 **SECTION 1.(j)** G.S. 105-153.2 reads as rewritten:

6 **"§ 105-153.2. Purpose.**

7 The general purpose of this Part is to impose a tax for the use of the State government upon  
8 the taxable income collectible annually:

- 9 (1) Of every resident of this State.
- 10 (2) Of every nonresident individual deriving income from North Carolina sources  
11 attributable to the ownership of any interest in real or tangible personal  
12 property in this State, deriving income from a business, trade, profession, or  
13 occupation carried on in this State, or deriving income from gambling  
14 activities in this State. This subdivision does not apply to a nonresident  
15 business or a nonresident employee who solely derives income from North  
16 Carolina sources attributable to a business, trade, profession, or occupation  
17 carried on in this State to perform disaster-related work during a disaster  
18 response period at the request of a critical infrastructure company. The  
19 definitions and provisions in G.S. 166A-19.70A apply to this subdivision."

20 **SECTION 1.(k)** G.S. 105-153.8(a) reads as rewritten:

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

- 23 (1) Every resident who for the taxable year has gross income under the Code that  
24 exceeds the standard deduction amount provided in G.S. 105-153.5(a)(1).
- 25 (2) Every nonresident individual who meets all of the following requirements:
  - 26 a. Receives during the taxable year gross income that is derived from  
27 North Carolina sources and is attributable to the ownership of any  
28 interest in real or tangible personal property in this State, is derived  
29 from a business, trade, profession, or occupation carried on in this  
30 State, or is derived from gambling activities in this State. This  
31 sub-subdivision does not apply to a nonresident business or a  
32 nonresident employee who solely derives income from North Carolina  
33 sources attributable to a business, trade, profession, or occupation  
34 carried on in this State to perform disaster-related work during a  
35 disaster response period at the request of a critical infrastructure  
36 company. The definitions and provisions in G.S. 166A-19.70A apply  
37 to this sub-subdivision.
  - 38 b. Has gross income under the Code that exceeds the applicable standard  
39 deduction amount provided in G.S. 105-153.5(a)(1).
- 40 (3) Any individual whom the Secretary believes to be liable for a tax under this  
41 Part, when so notified by the Secretary and requested to file a return."

42 **SECTION 1.(l)** G.S. 105-163.1(13) reads as rewritten:

43 **"§ 105-163.1. Definitions.**

44 The following definitions apply in this Article:

- 45 ...
- 46 (13) Wages. – The term has the same meaning as in section 3401 of the ~~Code~~ Code,  
47 except the term does not include amounts paid to a nonresident employee for  
48 a business, trade, profession, or occupation carried on in this State to perform  
49 disaster-related work during a disaster response period at the request of a  
50 critical infrastructure company. The definitions and provisions of  
51 G.S. 166A-19.70A apply to this subdivision.

1 ...."

2 **SECTION 1.(m)** G.S. 105-163.3(b) reads as rewritten:

3 "(b) Exemptions. – The withholding requirement does not apply to the following:

4 ...

5 (5) Compensation paid by a nonresident business or a critical infrastructure  
6 company to an ITIN contractor who is a nonresident individual for a business,  
7 trade, profession, or occupation carried on in this State to perform  
8 disaster-related work during a disaster response period at the request of a  
9 critical infrastructure company. The definitions and provisions of  
10 G.S. 166A-19.70A apply to this subdivision."

11 **SECTION 1.(n)** G.S. 105-163.7(b) reads as rewritten:

12 "(b) Informational Return to Secretary. – Every employer shall annually file an  
13 informational return with the Secretary that contains the information given on each of the  
14 employer's written statements to an employee. The Secretary may require additional information  
15 to be included on the informational return, provided the Secretary has given a minimum of 90  
16 days' notice of the additional information required. The informational return is due on or before  
17 January 31 of the succeeding year and must be filed in an electronic format as prescribed by the  
18 Secretary. If the employer terminates its business or permanently ceases paying wages during the  
19 calendar year, the informational return must be filed within 30 days of the last payment of  
20 remuneration. The informational return required by this subsection is in lieu of the report required  
21 by G.S. 105-154.

22 An employer that is not doing business in this State because it is a nonresident business  
23 performing disaster-related work during a disaster response period at the request of a critical  
24 infrastructure company is not required to file an information return with the Secretary. However,  
25 the employer must furnish to an employee, upon request, any information necessary for that  
26 person to properly file a State income tax return. The definitions and provisions in  
27 G.S. 166A-19.70A apply to this paragraph."

28 **SECTION 2.** Part 2 of Article 36C of Chapter 105 of the General Statutes is amended  
29 by adding a new section to read:

30 **"§ 105-449.69A. Temporary license during disaster response period.**

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

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

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

42 (2) The federal identification number of the business or, if such number is  
43 unavailable, the Social Security number of the owner.

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

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

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

1           **SECTION 3.** This act is effective when it becomes law and applies to disaster  
2 declarations on or after that date.