



SENATE BILL 498: Facilitate Response to Disasters.

2019-2020 General Assembly

Committee:	Senate Finance. If favorable, re-refer to Rules and Operations of the Senate	Date:	July 9, 2019
Introduced by:	Sens. B. Jackson, Blue, Newton	Prepared by:	Cindy Avrette
Analysis of:	First Edition		Staff Attorney

OVERVIEW: *Senate Bill 498¹ would do two things to help facilitate and expedite recovery after a natural disaster:*

- *Provide tax and regulatory relief for nonresident businesses and nonresident employees that perform disaster-related work during a disaster response period at the request of a public utility or a public communications provider.*
- *Allow the Secretary of Revenue to issue a temporary license to an importer, exporter, distributor, or transporter of motor fuel in response to a disaster declaration.*

The amendment revises the bill to address questions and concerns expressed by the agencies involved, and it removes the exception to the workers' compensation laws so that nonresident businesses will comply with applicable workers' compensation laws. The bill as amended would be identical to Part VI of Senate Bill 622, passed by the Senate on 3rd reading on May 20, 2019, and as Section 41.10 in the budget conference report for House Bill 966.

CURRENT LAW, BILL ANALYSIS, AND EFFECTIVE DATE:

Senate Bill 498, as amended, would provide tax and regulatory relief to out-of-state businesses that come into the State immediately after a disaster to help with critical infrastructure repair. At least 29 states have enacted similar disaster recovery legislation. Those states include Ohio, Florida, Texas, Virginia, Georgia, South Carolina, and Tennessee. The bill would do two things:

- Exclude a nonresident business and nonresident employees from income, franchise, and unemployment insurance tax as well as business registration requirements.
- Allow the Secretary of Revenue to issue a temporary license to an importer, exporter, distributor, or transporter of motor fuel in response to a disaster declaration.

Nonresident business and nonresident employees. – This bill would provide that nonresident businesses and nonresident employees that are requested to come into the State at the request of a *critical infrastructure company* are not doing business in this State for the disaster-related work performed during the disaster response period, and are therefore exempt from registration requirements and various State tax requirements. The tax and regulatory relief provided by this Part is limited in several ways:

¹ As introduced, this bill was identical to H538, as introduced by Reps. Howard, Setzer, Szoka, which is currently in House Finance.

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- It only applies to nonresident businesses and nonresident employees who come into the State at the request of a critical infrastructure company.
- It only applies to disaster-related work performed during a disaster response period.
- It only applies if the nonresident business or nonresident employee has no other income attributable to this State. Ie, it only applies in situations where, but for this work, the business or employee would not be subject to NC income and franchise taxes.

Section 1(a) defines a "*critical infrastructure company*" as a corporation doing business in this State prior to the disaster declaration that meets one or more of the following:

- Provides broadband, mobile telecommunications, telecommunications, or wireless Internet access.
- Is subject to control of the NC Utilities Commission, the NC Rural Electrification Authority, the Federal Communications Commission, or the Federal Energy Regulatory Commission.

It defines a "*nonresident business*" as an entity that has not been required to file an income or franchise tax return with the State for three years prior to the disaster response period. The term "nonresident business" includes a corporation, an affiliate or subsidiary of a critical infrastructure company, a pass-through entity, as well as a sole proprietorship.

It defines "*critical infrastructure*." Examples of critical infrastructure include communications networks; electric generation, transmission, and distribution systems; natural gas transmission and distribution systems; water pipelines; and related support facilities. The term "*disaster-related work*" is defined as repairing, renovating, installing, building, or performing services on critical infrastructure.

It defines a "*disaster response period*" as the beginning 10 days prior to the first day of a disaster declaration and extending until the earlier of the following:

- 60 days following the expiration of the disaster declaration, as provided under G.S. 166A-19.21(c).
- 180 days following the issuance of the disaster declaration. This period of time coincides with the general law.

Sections 1(b) through (d) provide relief from the following regulatory laws:

- Sections 1(b) and (c) provide a nonresident business solely performing disaster-related work in this State during a disaster response period at the request of a critical infrastructure company does not have to obtain a certificate of authority from the Secretary of State's office to do business in this State. Under general law, a foreign corporation that performs work in this State must obtain a certificate of authority from the Secretary of State. The application fee for a certificate of authority is \$250. Failure to obtain a certificate of authority would prevent a foreign corporation from maintaining an action or proceeding in any court in this State. The relief is granted to both corporations and LLCs.
- Section 1(d) provides service performed by a nonresident employee for a nonresident business performing disaster-related work in this State during a disaster response period at the request of a critical infrastructure company is not considered employment for purposes of the State unemployment insurance laws.

The remaining subsections of Section 1 provide relief from the following tax laws:

- Section 1(e) provides that a nonresident business that solely performs disaster-related work in this State during a disaster response period at the request of a critical infrastructure company is not

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considered to be doing business in this State and therefore is not subject to the State's franchise tax.

- Section 1(f) provides a nonresident business that solely performs disaster-related work in this State during a disaster response period at the request of a critical infrastructure company is not considered to be doing business in this State and therefore is not subject to the State's corporate income tax. Section 1(g) does require a taxpayer to add-back any payments made to an affiliate or subsidiary that is not subject to tax for this reason to determine the taxpayer's State taxable income, to the extent the payments are deducted by the taxpayer for federal tax purposes.
- Sections 1(h), (i), and (n) provide that pass-through entities, such as a subchapter-S corporation or a partnership, do not have to file informational returns with the Department of Revenue if the entity is a nonresident business that solely performs disaster-related work in this State during a disaster response period at the request of a critical infrastructure company. However, the entity must provide information to their shareholders and partners so that they may properly file a NC return if they are otherwise required to file one.
- Sections 1(j) and (k) provide a nonresident business or a nonresident employee who solely derives income from NC sources attributable to disaster-related work in this State during a disaster response period at the request of a critical infrastructure company is not considered to be doing business in this State and therefore is not subject to the State's individual income tax.
- Sections 1(l) and (m) provide that a business does not have to withhold NC individual income taxes for wages paid to a nonresident employee or for compensation paid to an ITIN contractor who is a nonresident if the income is derived from disaster-related work performed during a disaster response period at the request of a critical infrastructure company.

Temporary license to import, export, distribute, or transport motor fuel

Section 2 would allow the Secretary of Revenue to issue a temporary license to an applicant to import, export, distribute, or transport motor fuel in this State in response to a disaster declaration. The temporary license would expire upon the expiration of the disaster declaration. The person would continue to be responsible for filing returns and paying the required motor fuel taxes, but the person would not have to post a bond or obtain a certificate of authority to operate in this State from the Secretary of State to receive the temporary license. The Secretary of Revenue would not be allowed to renew or issue a temporary license to a person that failed to file the required returns or make payments of the required taxes.

Effective date

Section 3 provides that the bill is effective when it becomes law and applies to disaster declarations made on or after that date.