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HOUSE DRH80109-MD-54 (03/04)

Short Title: Aid Rapid Response to States of Emergency. (Public)

Sponsors: Representatives Arp, Howard, Carney, and Hanes (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO FACILITATE RAPID RESPONSE BY BUSINESSES TO STATES OF
3 EMERGENCY.

4 Whereas, during times of storm, flood, fire, earthquake, hurricane, or other disaster
5 or emergency, many businesses bring in resources and personnel from other states throughout
6 the United States on a temporary basis to expedite the often enormous and overwhelming task
7 of cleaning up, restoring, and repairing infrastructure in the State; and

8 Whereas, this may involve the need for out-of-state businesses, including
9 out-of-state affiliates of businesses based in the State, to bring in resources, property, or
10 personnel that previously have had no connection to the State and to perform activities in the
11 State, including repairing, renovating, installing, building, rendering services, or other business
12 activities relating to infrastructure, so as to require out-of-state personnel to be located in the
13 State for extended periods of time to perform such activities; and

14 Whereas, during such time of operating in the State on a temporary basis solely for
15 purposes of helping the State's infrastructure recover from the disaster or emergency, these
16 businesses and individual employees should not be burdened by any requirements for business
17 and employee taxes as a result of such activities in the State for the temporary period; and

18 Whereas, the State's nexus and residency thresholds are intended for businesses and
19 individuals who are in the State as part of the conduct of regular business operations or who
20 intend to reside in the State and should not be directed at businesses and individuals coming
21 into the State on a temporary basis to provide help and assistance in response to a declared state
22 of emergency; and

23 Whereas, to ensure that businesses may focus on quick response to the needs of the
24 State and its citizens during a state of emergency, it is appropriate for the Legislature to deem
25 that such activity for a reasonable period of time before, during, and after the disaster or
26 emergency for repair and restoration of the often devastating damage to property and
27 infrastructure in the State shall not establish presence, residency, doing business in the State,
28 nor any other criteria for purposes of certain State and local taxes, licensing, and regulatory
29 requirements; Now, therefore,

30 The General Assembly of North Carolina enacts:

31
32 **PART I. GENERAL PROVISIONS**

33 **SECTION 1.(a)** Chapter 166A of the General Statutes is amended by adding a new
34 Article to read:

35 "Article 6.

36 "Facilitation of Rapid Response by Businesses to States of Emergency.



"§ 166A-70. Definitions.

The following definitions apply in this Article:

- (1) Disaster or emergency-related work. – Repairing, renovating, installing, building, rendering services, or other business activities that relate to infrastructure that has been damaged, impaired, or destroyed during an emergency, as that term is defined in G.S. 166A-19.3, regardless of whether the infrastructure that has been damaged, impaired, or destroyed is within the geographical area covered by a state of emergency.
- (2) Disaster period. – A period that begins within 14 days of the date that a state of emergency is declared under Article 1A of this Chapter and that extends for a period of 60 calendar days after the state of emergency expires.
- (3) Infrastructure. – Property and equipment owned or used by communications networks, electric generation, transmission and distribution systems, gas distribution systems, water pipelines, public roads and bridges, and related support facilities that service multiple customers or residents, including, but not limited to, real and personal property such as buildings, offices, lines, poles, pipes, structures, and equipment.
- (4) Out-of-state business. – A business entity that, for the current taxable year and the preceding three taxable years, (i) has no presence in the State, (ii) conducts no business in the State, (iii) has no registrations or tax filings in the State, and (iv) has no nexus to the State prior to the declaration of a state of emergency, whose services are requested by a registered business or by a State or local government agency for purposes of performing disaster or emergency-related work in the State. The term shall also include a business entity that is affiliated with the registered business in the State solely through common ownership.
- (5) Out-of-state employee. – An employee who, for the current taxable year and the preceding three taxable years, does not work in the State, except for disaster or emergency-related work during a disaster period.
- (6) Registered business. – A business entity that is registered to do business in the State prior to a state of emergency under Article 1A of this Chapter.
- (7) State of emergency. – As defined in G.S. 166A-19.3. The term shall also include an event for which a Presidential Declaration of a Federal Major Disaster or Emergency has been issued.

"§ 166A-71. Limited exemption for out-of-state businesses and employees responding to a state of emergency.

(a) Limited Exemption for Out-of-State Businesses. – An out-of-state business that conducts operations within the State for purposes of performing disaster or emergency related work during the applicable disaster period shall not be considered to have established a level of presence that would require that business to register, file, or remit State or local taxes or that would require that business or its out-of-state employees to be subject to any State licensing or registration requirements. This shall include any and all State or local business licensing or registration requirements or State and local taxes or fees, including, but not limited to, unemployment insurance, State or local occupational licensing fees, sales and use tax, or ad valorem tax on equipment used or consumed during the disaster period, or Secretary of State licensing and regulatory requirements. For purposes of any State or local tax on or measured by, in whole or in part, net or gross income or receipts, all activity of the out-of-state business that is conducted in this State pursuant to this Article shall be disregarded with respect to any filing requirements for such tax including the filing required for a unitary or combined group of which the out-of-state business may be a part.

1 **(b) Limited Exemption for Out-of-State Employees.** – An out-of-state employee shall
2 not be considered to have established residency or a presence in the State that would require
3 that person or that person's employer to file and pay income taxes to be subjected to tax
4 withholdings, or to file and pay any other State or local tax or fee during the applicable disaster
5 period, including any related State or local employer withholding and remittance obligations.

6 **(c) Exception for Transactional Taxes and Fees.** – Out-of-state businesses and
7 out-of-state employees shall be required to pay transaction taxes and fees, including, but not
8 limited to, fuel taxes or sales and use taxes on materials or services subject to sales and use tax,
9 hotel taxes, car rental taxes, or fees that the out-of-state affiliated business or out-of-state
10 employee purchases for use or consumption in the State during the applicable disaster period,
11 unless such taxes are otherwise exempted during the applicable disaster period.

12 **(d) Section Inapplicable After Expiration of Disaster Period.** – Any out-of-state
13 business or out-of-state employee that remains in the State after the applicable disaster period
14 shall become subject to the State's normal standards for establishing presence, residency, or
15 doing business in the State and shall therefore become responsible for any business or
16 employee tax requirements, State and local registration, and licensing and filing requirements
17 that ensue.

18 **"§ 166A-72. Administration.**

19 **(a) Notification by Out-of-State Businesses.** – An out-of-state business that enters the
20 State shall provide to the Department of Revenue a statement that it is in the State for purposes
21 of performing disaster or emergency-related work during a disaster period. The statement shall
22 be in the form prescribed by the Secretary of Revenue, shall include any supporting
23 documentation the Secretary may require, and shall include the business's name, state of
24 domicile, principal business address, federal tax identification number, period of entry, and
25 contact information.

26 **(b) Notification by Registered Business.** – A registered business in the State shall
27 provide the items of information required in subsection (a) of this section for any affiliate that
28 enters the State that is an out-of-State business. The notification shall be in the form prescribed
29 by the Secretary of Revenue and shall additionally include contact information for the
30 registered business in the State.

31 **(c) Rule making.** – The Department of Revenue shall adopt rules implementing the
32 provisions of this Article."

33 **SECTION 1.(b)** G.S. 55-15-01 reads as rewritten:

34 **"§ 55-15-01. Authority to transact business required.**

35 **(a)** A foreign corporation may not transact business in this State until it obtains a
36 certificate of authority from the Secretary of State.

37 **(b)** Without excluding other activities which may not constitute transacting business in
38 this State, a foreign corporation shall not be considered to be transacting business in this State
39 solely for the purposes of this Chapter, by reason of carrying on in this State any one or more of
40 the following activities:

- 41 (1) Maintaining or defending any action or suit or any administrative or
42 arbitration proceeding, or effecting the settlement thereof or the settlement
43 of claims or disputes;
- 44 (2) Holding meetings of its directors or shareholders or carrying on other
45 activities concerning its internal affairs;
- 46 (3) Maintaining bank accounts or borrowing money in this State, with or
47 without security, even if such borrowings are repeated and continuous
48 transactions;
- 49 (4) Maintaining offices or agencies for the transfer, exchange, and registration
50 of its securities, or appointing and maintaining trustees or depositories with
51 relation to its securities;

- 1 (5) Soliciting or procuring orders, whether by mail or through employees or
2 agents or otherwise, where such orders require acceptance without this State
3 before becoming binding contracts;
- 4 (6) Making or investing in loans with or without security including servicing of
5 mortgages or deeds of trust through independent agencies within the State,
6 the conducting of foreclosure proceedings and sale, the acquiring of property
7 at foreclosure sale and the management and rental of such property for a
8 reasonable time while liquidating its investment, provided no office or
9 agency therefor is maintained in this State;
- 10 (7) Taking security for or collecting debts due to it or enforcing any rights in
11 property securing the same;
- 12 (8) Transacting business in interstate commerce;
- 13 (9) Conducting an isolated transaction completed within a period of six months
14 and not in the course of a number of repeated transactions of like nature;
- 15 (10) Selling through independent contractors;
- 16 (11) Owning, without more, real or personal ~~property~~ property; and
- 17 (12) Proceeding under Article 6 of Chapter 166A of the General Statutes.
- 18 (c) Reserved for future codification purposes.
- 19 (d) Foreign insurance companies that are licensed by the Commissioner of Insurance
20 are not required to obtain a certificate of authority from the Secretary of State."

21 **SECTION 1.(c)** G.S. 57C-7-02 reads as rewritten:

22 **"§ 57C-7-02. Authority to transact business required.**

23 (a) A foreign limited liability company may not transact business in this State until it
24 obtains a certificate of authority from the Secretary of State.

25 (b) Without excluding other activities that may not constitute transacting business in
26 this State, a foreign limited liability company shall not be considered to be transacting business
27 in this State for the purposes of this Chapter by reason of carrying on in this State any one or
28 more of the following activities:

- 29 (1) Maintaining or defending any action or suit or any administrative or
30 arbitration proceeding, or effecting the settlement thereof or the settlement
31 of claims or disputes;
- 32 (2) Holding meetings of its managers or members or carrying on other activities
33 concerning its internal affairs;
- 34 (3) Maintaining bank accounts or borrowing money in this State, with or
35 without security, even if such borrowings are repeated and continuous
36 transactions;
- 37 (4) Maintaining offices or agencies for the transfer, exchange, and registration
38 of its membership interests, or appointing and maintaining trustees or
39 depositories with relation to its membership interests;
- 40 (5) Soliciting or procuring orders, whether by mail or through employees or
41 agents or otherwise, where the orders require acceptance without this State
42 before becoming binding contracts;
- 43 (6) Making or investing in loans with or without security including servicing of
44 mortgages or deeds of trust through independent agencies within the State,
45 the conducting of foreclosure proceedings and sales, the acquiring of
46 property at foreclosure sale, and the management and rental of such property
47 for a reasonable time while liquidating its investment, provided no office or
48 agency therefor is maintained in this State;
- 49 (7) Taking security for or collecting debts due to it or enforcing any rights in
50 property securing the same;
- 51 (8) Transacting business in interstate commerce;

- 1 (9) Conducting an isolated transaction completed within a period of six months
2 and not in the course of a number of repeated transactions of like nature;
3 (10) Selling through independent contractors; ~~and~~
4 (11) Owning, without more, real or personal ~~property-property~~; and
5 (12) Proceeding under Article 6 of Chapter 166A of the General Statutes.
6 (c) This section does not apply in determining the contacts or activities that may subject
7 a foreign limited liability company to service of process or taxation in this State or to regulation
8 under any other law of this State."
9

10 PART II. TAX EXEMPTIONS

11 **SECTION 2.1.** G.S. 105-125(a) is amended by adding a new subdivision to read:

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

- 15 ...
16 (10) An out-of-state business doing business in this State limited to disaster or
17 emergency-related work during a disaster period. The definitions of
18 G.S. 166A-70 apply in this section.

19 Provided, that an entity that qualifies as a real estate mortgage investment conduit, as
20 defined in section 860D of the Code, is exempt from all of the taxes levied in this Article. Upon
21 request by the Secretary of Revenue, a real estate mortgage investment conduit must establish
22 in writing its qualification for this exemption."

23 **SECTION 2.2.** G.S. 105-130.16 reads as rewritten:

24 "§ 105-130.16. Returns.

25 (a) ~~Every Return.~~ – Subject to the exception in subsection (d) of this section, every
26 corporation doing business in this State must file with the Secretary an income tax return
27 showing specifically the items of gross income and the deductions allowed by this Part and any
28 other facts the Secretary requires to make any computation required by this Part. The return of
29 a corporation must be signed by its president, vice-president, treasurer, or chief financial
30 officer. The officer signing the return must furnish an affirmation verifying the return. The
31 affirmation must be in the form required by the Secretary.

32 (b), (c) Repealed by Session Laws 2011-390, s. 4, as amended by Session Laws
33 2011-411, s. 8(b), effective for taxable years beginning on or after January 1, 2012.

34 (d) Exception. – An out-of-state business earning income in this State limited to disaster
35 or emergency-related work during a disaster period is not required to file a return for or pay
36 income tax on the income. The definitions of G.S. 166A-70 apply in this section."

37 **SECTION 2.3.** G.S. 105-152 reads as rewritten:

38 "§ 105-152. Income tax returns.

39 (a) Who Must File. – The following individuals shall file with the Secretary an income
40 tax return under affirmation:

- 41 (1) Every resident required to file an income tax return for the taxable year
42 under the Code and every nonresident who (i) derived gross income from
43 North Carolina sources during the taxable year attributable to the ownership
44 of any interest in real or tangible personal property in this State or derived
45 from a business, trade, profession, or occupation carried on in this State and
46 (ii) is required to file an income tax return for the taxable year under the
47 Code.
48 (2) Repealed by Session Laws 1991 (Reg. Sess., 1992), c. 930, s. 1.
49 (3) Any individual whom the Secretary believes to be liable for a tax under this
50 Part, when so notified by the Secretary and requested to file a return.

1 (a1) Exception. – An out-of-state business or out-of-state employee earning income in
2 this State limited to disaster or emergency-related work during a disaster period is not required
3 to file a return for or pay income tax on the income. The definitions of G.S. 166A-70 apply in
4 this section.

5 "

6 **SECTION 2.4.** G.S. 105-275 is amended by adding a new subdivision to read:

7 **"§ 105-275. Property classified and excluded from the tax base.**

8 The following classes of property are designated special classes under Article V, Sec. 2(2),
9 of the North Carolina Constitution and are excluded from tax:

10 ...

11 (46) Tangible personal property of an out-of-state business or out-of-state
12 employee brought into the State to assist during a disaster period. The
13 definitions of G.S. 166A-70A apply in this subdivision."

14 **SECTION 2.5.** Section 2.4 of this Part is effective for taxes imposed for taxable
15 years beginning on or after July 1, 2013. The remainder of this Part is effective for taxable
16 years beginning on or after January 1, 2013.

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18 **PART III. EFFECTIVE DATE**

19 **SECTION 3.** Except as otherwise provided, this act is effective when it becomes
20 law.