

DEPARTMENT OF TAXATION

2015 Fiscal Impact Statement

1. **Patron** R. Lee Ware, Jr.

2. **Bill Number** HB 1386

3. **Committee** Passed House and Senate

House of Origin:

 Introduced

 Substitute

 Engrossed

4. **Title** Tax Exemption for Out-of-State Businesses
and Employees Providing Disaster Relief
Assistance in Virginia

Second House:

 In Committee

 Substitute

 X **Enrolled**

5. **Summary/Purpose:**

This bill would provide that disaster-related or emergency-related work performed by an out-of-state business within Virginia would not be considered in determining whether the business is required to file, remit, or pay any state or local tax or fee, or whether such business or its out-of-state employees are required to be licensed or registered in any manner by Virginia or local governments.

This bill would provide that disaster-related or emergency-related work performed by an out-of-state employee within Virginia would not be considered to have established such person's residency or a presence in Virginia that would require that person or that person's employer to file and pay income taxes or be subject to withholding, or file and pay any other state or local tax or fee during the disaster response period.

The provisions of this bill would not apply to any transaction taxes and fees, including but not limited to, motor fuels taxes, sales and use taxes, transient occupancy taxes, and car rental taxes and fees based on purchases, leases, or consumption in Virginia.

This bill would allow the State Corporation Commission ("SCC") to require any business to disclose whether it is an out-of-state business, and provide certain information to the SCC. This bill would also allow the SCC to require any business to provide such information regarding any affiliate that is an out-of-state business to the SCC.

This bill contains an emergency clause and would be in force from its passage.

6. **Budget amendment necessary:** No.

7. **Fiscal Impact Estimates are:** Not available. (See Line 8.)

8. Fiscal implications:

Administrative Costs

The Department and the SCC consider implementation of this bill as routine, and do not require additional funding.

Revenue Impact

Because the occurrence of a disaster or an emergency is unpredictable, this bill would have an unknown negative General Fund revenue and local revenue impact beginning in Fiscal Year 2015.

9. Specific agency or political subdivisions affected:

State Corporation Commission
Department of Taxation

10. Technical amendment necessary: No.

11. Other comments:

Requirements for Out-of-State Businesses Conducting Business in Virginia

Registration with the SCC and the Department

Any out-of-state business looking to conduct business in Virginia is required to register with the SCC and pay the SCC's annual registration fee, and to register with the Department.

Business, Professional and Occupational License Tax

Under current law, a locality may charge an annual Business, Professional and Occupational License ("BPOL") fee on gross receipts or an annual license tax on any gross receipts on which it does not charge the license fee. A locality may require any business, including an out-of-state business, engaging in business at a definite place of business within such locality to pay the fee or tax. A "definite place of business" is an office or location at which occurs a regular and continuous course of dealing for thirty consecutive days or more. However, contractors are subject to the BPOL fee or tax in any locality in which the amount of business done by such contractor exceeds the sum of \$25,000, even if the contractor has conducted business in the locality for less than thirty days.

Retail Sales and Use Tax

Under current law, only vendors who meet the definition of "dealer" and who have sufficient contact with the Commonwealth are required to register and collect the Retail Sales and Use Tax. Generally, physically performing work in the Commonwealth is enough contact to require a business to file and remit the Retail Sales and Use Tax. This

bill would prohibit the Commonwealth from using disaster-related or emergency-related work as sufficient contact to require such out-of-state businesses to collect the Retail Sales and Use Tax. Purchases made by out-of-state businesses and employees in the Commonwealth would continue to be subject to the Retail Sales and Use Tax under this bill.

Withholding Tax

Any business, including an out-of-state business, that has employees in Virginia and is required by federal law to withhold tax from any wages paid to such employees is required to register for the withholding tax, withhold taxes on wages paid to employees in Virginia, file any required withholding tax returns, and pay the amount withheld to the Department. A business is generally required to withhold tax from the wages of both its resident and nonresident employees that perform services in Virginia for wages, and from its resident employees that perform services outside of Virginia for wages.

Other Requirements

An out-of-state business that conducts business in Virginia is obligated to make any required payments, and pay any taxes and file any returns that are applicable to such business. Such payments and taxes may include, but are not limited to, the:

- Unemployment insurance premiums;
- Income tax;
- Sales and use tax on purchases made by the business;
- Tangible personal property tax;
- Recordation tax;
- Insurance premiums license tax;
- Transient occupancy tax;
- Virginia fuels tax; and
- Motor vehicle rental tax.

Virginia's Taxation of Out-of-State Individuals

Income Tax

Virginia imposes its income tax on any individual that is a resident of Virginia. Two classes of residents, domiciliary residents and actual residents, are set forth in the *Virginia Code*. A "domiciliary resident" of Virginia is an individual whose permanent place of residence and the place to which he or she intends to return if he or she actually resides elsewhere is in Virginia. An "actual resident" of Virginia is an individual who, for an aggregate of more than 183 days of the taxable year, maintained his place of abode within Virginia, regardless of where such individual is domiciled.

Virginia imposes its income tax on any individual who is a nonresident of Virginia who has income from Virginia sources. "Income from Virginia sources" includes items of income, gain, loss, and deductions attributable to the ownership of property in Virginia or the conduct of a business, trade, profession, or occupation in Virginia.

Other Taxes

A nonresident individual that is located or completes a transaction in Virginia is required to pay any taxes and file any forms that are applicable to such individual. Such taxes may include, but are not limited to, the sales and use tax and the recordation tax.

Other States

During 2011, the National Conference of State Legislatures (“NCSL”) adopted model statutory language that sets forth an exemption from state and local taxes, fees, and registration requirements for out-of-state businesses and employees that perform work or services during a disaster response period. The exemption provided in the NCSL’s model statutory language does not apply to state transaction taxes and fees. Eleven states (Alabama, Arizona, Colorado, Delaware, Georgia, Indiana, Maryland, Maine, Missouri, South Carolina, and Utah) have enacted legislation that is identical to or similar to the NCSL’s model statutory language.

Proposed Legislation

This bill would provide that disaster-related or emergency-related work performed by an out-of-state business within Virginia would not be considered in determining and would not result in:

- Any requirement that the business file, remit, or pay any state or local taxes or fees, including any filing required for a unitary or combined group of which the out-of-state business may be a part of; or
- Any requirement that the business or its out-of-state employees be licensed or registered in any manner by Virginia or local governments.

The taxes, fees, and registration requirements this bill would provide an exemption from include, but are not limited to:

- Fees assessed and collected, and authorizations or registrations issued by the SCC;
- Unemployment insurance premiums;
- Income taxes;
- State registration fees;
- BPOL taxes; and
- Collection of sales and use tax.

This bill would provide that disaster-related or emergency-related work performed by an out-of-state employee within Virginia would not be considered to have established such person’s residency or a presence in Virginia that would require that person or that person’s employer to file and pay income taxes or to be subject to withholding, or to file and pay any other state or local tax or fee during the disaster response period. This bill would prohibit this provision from being construed to affect or alter the responsibility of the out-of-state employee, or that person’s employer, to file and pay income taxes or be

subject to tax withholdings in the employee's home state on income earned in Virginia during the disaster response period.

The provisions of this bill would not apply to any transaction taxes and fees including, but not limited to, motor fuels taxes, sales and use taxes, transient occupancy taxes, and car rental taxes and fees based on purchases, leases, or consumption in Virginia. The provisions of this bill would not apply to any out-of-state business or out-of-state employee for any period of presence or transaction of business in Virginia after the disaster response period ends.

"Critical infrastructure" would be defined as real and personal property and equipment owned or used to provide public utility or communications services, including but not limited to, communications networks, electric generation facilities, transmission and distribution systems, gas distribution systems, lines, poles, pipes, structures, towers, water and sewage pipelines and systems, related support facilities, buildings, offices, and equipment.

A "declared disaster or emergency" would be defined as a disaster or emergency for which:

- A state of emergency has been declared for Virginia by the Governor or by an official authorized by federal law to make such declarations; and
- The Governor determines and declares that assistance is needed from out-of-state businesses and employees.

"Disaster-related or emergency-related work" would be defined as repairing, renovating installing, building, or rendering services or other activities necessary to mitigate damage to critical infrastructure resulting from a declared disaster or emergency during a disaster response period. Such work would not include:

- Any activities that an out-of-state business or an out-of-state employee is paid to perform by Virginia, a locality in Virginia, or a registered business in Virginia; or
- The sale of goods by an out-of-state business or an out-of-state employee to Virginia, a locality in Virginia, or a registered business in Virginia.

"Disaster response period" would be defined as a period that begins 10 days prior to the first day of the declared disaster or emergency and extends for a period of 60 days after the end of the declared disaster or emergency, or any longer period as declared by the Governor.

An "out-of-state business" would be defined as a business entity:

- Whose services are requested by a registered business, Virginia, or a local government for purposes of performing disaster-related or emergency-related work in Virginia;
- That has no presence in and conducts no business in Virginia except for declared disaster-related or emergency-related work; and

- That has not obtained from the SCC a certificate of authority or registration to transact business in Virginia and had no registrations or tax filings or nexus in Virginia other than disaster-related or emergency-related work during the tax year immediately preceding a declared disaster or emergency.

A business entity that otherwise meets the definition of an out-of-state business would maintain such status even if it was affiliated with a registered business if such affiliation was solely through common ownership. A “registered business” would be defined as a domestic or foreign business entity that is listed in the business entity records maintained in the Office of the Clerk of the SCC, provides public utility or communications services, and was in existence or had obtained from the SCC a certificate of authority or registration to transact business in Virginia prior to a declared disaster or emergency.

An “out-of-state employee” would be defined as an employee who does not work in Virginia except for disaster-related or emergency-related work during a disaster response period.

This bill would allow the SCC to require any business:

- To disclose whether it is an out-of-state business; and
- If a business states that it is an out-of-state business, to provide a statement that includes the business’s name, state of domicile, principal business address, federal tax identification number, date of entry into Virginia, local contact information, and contact information for any affiliate of such business that has obtained from the SCC a certificate of authority or registration to transact business in Virginia.

This bill would allow the SCC to require any business entity that has obtained from the SCC a certificate of authority or registration to transact business in Virginia to provide the above information for any affiliate that is an out-of-state business.

The SCC would be required to maintain a record of such disclosures, statements, and information, and make the record available to the public.

This bill contains an emergency clause and would be in force from its passage.

cc : Secretary of Finance

Date: 3/11/2015 MTH
HB1386FER161