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## SENATE BILL NO. 5039

Senate Amendments in [ ] - September 4, 2020

A *BILL to amend and reenact §§ 2.2-4343 and 44-146.17 of the Code of Virginia, relating to Emergency Services and Disaster Law; powers and duties of Governor; purchase of personal protective equipment during a disaster caused by a communicable disease of public health threat.*

Patrons Prior to Engrossment—Senators Marsden and Favola; Delegate: Kory

Referred to Committee on General Laws and Technology

**Be it enacted by the General Assembly of Virginia:****1. That §§ 2.2-4343 and 44-146.17 of the Code of Virginia are amended and reenacted as follows:****§ 2.2-4343. Exemption from operation of chapter for certain transactions.**

A. The provisions of this chapter shall not apply to:

1. The Virginia Port Authority in the exercise of any of its powers in accordance with Chapter 10 (§ 62.1-128 et seq.) of Title 62.1, provided the Authority implements, by policy or regulation adopted by the Board of Commissioners, procedures to ensure fairness and competitiveness in the procurement of goods and services and in the administration of its capital outlay program. This exemption shall be applicable only so long as such policies and procedures meeting the requirements remain in effect.

2. The Virginia Retirement System for selection of services related to the management, purchase or sale of authorized investments, actuarial services, and disability determination services. Selection of these services shall be governed by the standard set forth in § 51.1-124.30.

3. The State Treasurer in the selection of investment management services related to the external management of funds shall be governed by the standard set forth in § 2.2-4514, and shall be subject to competitive guidelines and policies that are set by the Commonwealth Treasury Board and approved by the Department of General Services.

4. The Department of Social Services or local departments of social services for the acquisition of motor vehicles for sale or transfer to Temporary Assistance to Needy Families (TANF) recipients.

5. The College of William and Mary in Virginia, Virginia Commonwealth University, the University of Virginia, and Virginia Polytechnic Institute and State University in the selection of services related to the management and investment of their endowment funds, endowment income, gifts, all other nongeneral fund reserves and balances, or local funds of or held by the respective public institution of higher education pursuant to § 23.1-2210, 23.1-2306, 23.1-2604, or 23.1-2803. However, selection of these services shall be governed by the Uniform Prudent Management of Institutional Funds Act (§ 64.2-1100 et seq.) as required by §§ 23.1-2210, 23.1-2306, 23.1-2604, and 23.1-2803.

6. The Board of the Virginia College Savings Plan for the selection of services related to the operation and administration of the Plan, including, but not limited to, contracts or agreements for the management, purchase, or sale of authorized investments or actuarial, record keeping, or consulting services. However, such selection shall be governed by the standard set forth in § 23.1-706.

7. Public institutions of higher education for the purchase of items for resale at retail bookstores and similar retail outlets operated by such institutions. However, such purchase procedures shall provide for competition where practicable.

8. The purchase of goods and services by agencies of the legislative branch that may be specifically exempted therefrom by the Chairman of the Committee on Rules of either the House of Delegates or the Senate. Nor shall the contract review provisions of § 2.2-2012 apply to such procurements. The exemption shall be in writing and kept on file with the agency's disbursement records.

9. Any town with a population of less than 3,500, except as stipulated in the provisions of §§ 2.2-4305, 2.2-4311, 2.2-4315, 2.2-4330, 2.2-4333 through 2.2-4338, 2.2-4343.1, and 2.2-4367 through 2.2-4377 and Chapter 43.1 (§ 2.2-4378 et seq.).

10. Any county, city or town whose governing body has adopted, by ordinance or resolution, alternative policies and procedures which are (i) based on competitive principles and (ii) generally applicable to procurement of goods and services by such governing body and its agencies, except as stipulated in subdivision 12.

This exemption shall be applicable only so long as such policies and procedures, or other policies and procedures meeting the requirements of § 2.2-4300, remain in effect in such county, city or town. Such policies and standards may provide for incentive contracting that offers a contractor whose bid is accepted the opportunity to share in any cost savings realized by the locality when project costs are reduced by such contractor, without affecting project quality, during construction of the project. The fee, if any, charged by the project engineer or architect for determining such cost savings shall be paid as a

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59 separate cost and shall not be calculated as part of any cost savings.

60 11. Any school division whose school board has adopted, by policy or regulation, alternative policies  
61 and procedures that are (i) based on competitive principles and (ii) generally applicable to procurement  
62 of goods and services by the school board, except as stipulated in subdivision 12.

63 This exemption shall be applicable only so long as such policies and procedures, or other policies or  
64 procedures meeting the requirements of § 2.2-4300, remain in effect in such school division. This  
65 provision shall not exempt any school division from any centralized purchasing ordinance duly adopted  
66 by a local governing body.

67 12. (Effective until January 1, 2021) Notwithstanding the exemptions set forth in subdivisions 9  
68 through 11, the provisions of subsections B, C, and D of § 2.2-4303, §§ 2.2-4305, 2.2-4311, 2.2-4315,  
69 2.2-4317, 2.2-4330, 2.2-4333 through 2.2-4338, 2.2-4342, 2.2-4343.1, and 2.2-4367 through 2.2-4377,  
70 and Chapter 43.1 (§ 2.2-4378 et seq.) shall apply to all counties, cities, and school divisions, and to all  
71 towns having a population greater than 3,500 in the Commonwealth.

72 The method for procurement of professional services through competitive negotiation set forth in  
73 §§ 2.2-4302.2, 2.2-4303.1, and 2.2-4303.2 shall also apply to all counties, cities, and school divisions,  
74 and to all towns having a population greater than 3,500, where the cost of the professional service is  
75 expected to exceed \$80,000 in the aggregate or for the sum of all phases of a contract or project. A  
76 school board that makes purchases through its public school foundation or purchases educational  
77 technology through its educational technology foundation, either as may be established pursuant to  
78 § 22.1-212.2:2 shall be exempt from the provisions of this chapter, except, relative to such purchases,  
79 the school board shall comply with the provisions of §§ 2.2-4311 and 2.2-4367 through 2.2-4377.

80 12. (Effective January 1, 2021) Notwithstanding the exemptions set forth in subdivisions 9 through  
81 11, the provisions of subsections B, C, and D of § 2.2-4303, §§ 2.2-4305, 2.2-4311, 2.2-4315, 2.2-4317,  
82 2.2-4330, 2.2-4333 through 2.2-4338, 2.2-4342, 2.2-4343.1, and 2.2-4367 through 2.2-4377, Chapter  
83 43.1 (§ 2.2-4378 et seq.), and § 58.1-1902 shall apply to all counties, cities, and school divisions and to  
84 all towns having a population greater than 3,500 in the Commonwealth.

85 The method for procurement of professional services through competitive negotiation set forth in  
86 §§ 2.2-4302.2, 2.2-4303.1, and 2.2-4303.2 shall also apply to all counties, cities, and school divisions,  
87 and to all towns having a population greater than 3,500, where the cost of the professional service is  
88 expected to exceed \$80,000 in the aggregate or for the sum of all phases of a contract or project. A  
89 school board that makes purchases through its public school foundation or purchases educational  
90 technology through its educational technology foundation, either as may be established pursuant to  
91 § 22.1-212.2:2 shall be exempt from the provisions of this chapter, except, relative to such purchases,  
92 the school board shall comply with the provisions of §§ 2.2-4311 and 2.2-4367 through 2.2-4377.

93 13. A public body that is also a utility operator may purchase services through or participate in  
94 contracts awarded by one or more utility operators that are not public bodies for utility marking services  
95 as required by the Underground Utility Damage Prevention Act (§ 56-265.14 et seq.). A purchase of  
96 services under this subdivision may deviate from the procurement procedures set forth in this chapter  
97 upon a determination made in advance by the public body and set forth in writing that competitive  
98 sealed bidding is either not practicable or not fiscally advantageous to the public, and the contract is  
99 awarded based on competitive principles.

100 14. Procurement of any construction or planning and design services for construction by a Virginia  
101 nonprofit corporation or organization not otherwise specifically exempted when (i) the planning, design  
102 or construction is funded by state appropriations of \$10,000 or less or (ii) the Virginia nonprofit  
103 corporation or organization is obligated to conform to procurement procedures that are established by  
104 federal statutes or regulations, whether those federal procedures are in conformance with the provisions  
105 of this chapter.

106 15. Purchases, exchanges, gifts or sales by the Citizens' Advisory Council on Furnishing and  
107 Interpreting the Executive Mansion.

108 16. The Eastern Virginia Medical School in the selection of services related to the management and  
109 investment of its endowment and other institutional funds. The selection of these services shall, however,  
110 be governed by the Uniform Prudent Management of Institutional Funds Act (§ 64.2-1100 et seq.).

111 17. The Department of Corrections in the selection of pre-release and post-incarceration services and  
112 the Department of Juvenile Justice in the selection of pre-release and post-commitment services.

113 18. The University of Virginia Medical Center to the extent provided by subdivision A 3 of  
114 § 23.1-2213.

115 19. The purchase of goods and services by a local governing body or any authority, board,  
116 department, instrumentality, institution, agency or other unit of state government when such purchases  
117 are made under a remedial plan established by the Governor pursuant to subsection C of § 2.2-4310 or  
118 by a chief administrative officer of a county, city or town pursuant to § 15.2-965.1.

119 20. The contract by community services boards or behavioral health authorities with an administrator  
120 or management body pursuant to a joint agreement authorized by § 37.2-512 or 37.2-615.

21. [Expired].

22. The purchase of Virginia-grown food products for use by a public body where the annual cost of the product is not expected to exceed \$100,000, provided that the procurement is accomplished by (i) obtaining written informal solicitation of a minimum of three bidders or offerors if practicable and (ii) including a written statement regarding the basis for awarding the contract.

23. The Virginia Industries for the Blind when procuring components, materials, supplies, or services for use in commodities and services furnished to the federal government in connection with its operation as an AbilityOne Program-qualified nonprofit agency for the blind under the Javits-Wagner-O'Day Act, 41 U.S.C. §§ 8501-8506, provided that the procurement is accomplished using procedures that ensure that funds are used as efficiently as practicable. Such procedures shall require documentation of the basis for awarding contracts. Notwithstanding the provisions of § 2.2-1117, no public body shall be required to purchase such components, materials, supplies, services, or commodities.

24. *The purchase of personal protective equipment for private, non-governmental entities by the Governor pursuant to subdivision (11) of § 44-146.17 during a disaster caused by a communicable disease of public health threat for which a state of emergency has been declared.*

B. Where a procurement transaction involves the expenditure of federal assistance or contract funds, the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or regulations not in conformance with the provisions of this chapter, a public body may comply with such federal requirements, notwithstanding the provisions of this chapter, only upon the written determination of the Governor, in the case of state agencies, or the governing body, in the case of political subdivisions, that acceptance of the grant or contract funds under the applicable conditions is in the public interest. Such determination shall state the specific provision of this chapter in conflict with the conditions of the grant or contract.

#### **§ 44-146.17. Powers and duties of Governor.**

The Governor shall be Director of Emergency Management. He shall take such action from time to time as is necessary for the adequate promotion and coordination of state and local emergency services activities relating to the safety and welfare of the Commonwealth in time of disasters.

The Governor shall have, in addition to his powers hereinafter or elsewhere prescribed by law, the following powers and duties:

(1) To proclaim and publish such rules and regulations and to issue such orders as may, in his judgment, be necessary to accomplish the purposes of this chapter including, but not limited to such measures as are in his judgment required to control, restrict, allocate or regulate the use, sale, production and distribution of food, fuel, clothing and other commodities, materials, goods, services and resources under any state or federal emergency services programs.

He may adopt and implement the Commonwealth of Virginia Emergency Operations Plan, which provides for state-level emergency operations in response to any type of disaster or large-scale emergency affecting Virginia and that provides the needed framework within which more detailed emergency plans and procedures can be developed and maintained by state agencies, local governments and other organizations.

He may direct and compel evacuation of all or part of the populace from any stricken or threatened area if this action is deemed necessary for the preservation of life, implement emergency mitigation, preparedness, response or recovery actions; prescribe routes, modes of transportation and destination in connection with evacuation; and control ingress and egress at an emergency area, including the movement of persons within the area and the occupancy of premises therein.

Executive orders, to include those declaring a state of emergency and directing evacuation, shall have the force and effect of law and the violation thereof shall be punishable as a Class 1 misdemeanor in every case where the executive order declares that its violation shall have such force and effect.

Such executive orders declaring a state of emergency may address exceptional circumstances that exist relating to an order of quarantine or an order of isolation concerning a communicable disease of public health threat that is issued by the State Health Commissioner for an affected area of the Commonwealth pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of Title 32.1.

Except as to emergency plans issued to prescribe actions to be taken in the event of disasters and emergencies, no rule, regulation, or order issued under this section shall have any effect beyond June 30 next following the next adjournment of the regular session of the General Assembly but the same or a similar rule, regulation, or order may thereafter be issued again if not contrary to law;

(2) To appoint a State Coordinator of Emergency Management and authorize the appointment or employment of other personnel as is necessary to carry out the provisions of this chapter, and to remove, in his discretion, any and all persons serving hereunder;

(3) To procure supplies and equipment, to institute training and public information programs relative to emergency management and to take other preparatory steps including the partial or full mobilization of emergency management organizations in advance of actual disaster, to insure the furnishing of

182 adequately trained and equipped forces in time of need;

183 (4) To make such studies and surveys of industries, resources, and facilities in the Commonwealth as  
184 may be necessary to ascertain the capabilities of the Commonwealth and to plan for the most efficient  
185 emergency use thereof;

186 (5) On behalf of the Commonwealth enter into mutual aid arrangements with other states and to  
187 coordinate mutual aid plans between political subdivisions of the Commonwealth. After a state of  
188 emergency is declared in another state and the Governor receives a written request for assistance from  
189 the executive authority of that state, the Governor may authorize the use in the other state of personnel,  
190 equipment, supplies, and materials of the Commonwealth, or of a political subdivision, with the consent  
191 of the chief executive officer or governing body of the political subdivision;

192 (6) To delegate any administrative authority vested in him under this chapter, and to provide for the  
193 further delegation of any such authority, as needed;

194 (7) Whenever, in the opinion of the Governor, the safety and welfare of the people of the  
195 Commonwealth require the exercise of emergency measures due to a threatened or actual disaster, he  
196 may declare a state of emergency to exist;

197 (8) To request a major disaster declaration from the President, thereby certifying the need for federal  
198 disaster assistance and ensuring the expenditure of a reasonable amount of funds of the Commonwealth,  
199 its local governments, or other agencies for alleviating the damage, loss, hardship, or suffering resulting  
200 from the disaster;

201 (9) To provide incident command system guidelines for state agencies and local emergency response  
202 organizations; and

203 (10) Whenever, in the opinion of the Governor or his designee, an employee of a state or local  
204 public safety agency responding to a disaster has suffered an extreme personal or family hardship in the  
205 affected area, such as the destruction of a personal residence or the existence of living conditions that  
206 imperil the health and safety of an immediate family member of the employee, the Governor may direct  
207 the Comptroller of the Commonwealth to issue warrants not to exceed \$2,500 per month, for up to three  
208 calendar months, to the employee to assist the employee with the hardship; and

209 (11) *During a disaster caused by a communicable disease of public health threat for which a state of*  
210 *emergency has been declared pursuant to subdivision (7), to establish a program through which the*  
211 *Governor may purchase personal protective equipment (PPE) for private, non-governmental entities and*  
212 *distribute the PPE to such private, non-governmental entities. The Governor shall [ be entitled to seek*  
213 *reimbursement for such purchases from the private, non-governmental entities and may establish and*  
214 *charge fees to recover the cost of procuring and distributing the PPE. , prior to making any purchase*  
215 *pursuant to this subdivision, ensure that the cost will be reimbursed or otherwise funded by the federal*  
216 *government, a private entity, or a combination thereof. If part of the cost is to be funded by a private*  
217 *entity, the Governor shall not make such purchase until such entity has entered into a contractual*  
218 *agreement to reimburse the Commonwealth. The terms of such agreement may include, in addition to*  
219 *the purchase price, fees for procurement, distribution, and any other costs the Governor determines to*  
220 *be appropriate. ] Any purchase made by the Governor pursuant to this subdivision shall be exempt from*  
221 *the provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq.), except the Governor shall be*  
222 *encouraged to comply with the provisions of § 2.2-4310 when possible.*

223 As used in this subdivision, "personal protective equipment (PPE)" means equipment worn to  
224 minimize exposure to hazards that cause serious workplace injuries and illnesses, and may include items  
225 such as gloves, safety glasses and shoes, earplugs or muffs, hard hats, respirators, or coveralls, vests,  
226 and full body suits.