

Department of Planning and Budget
2020 Special Session I - Fiscal Impact Statement

1. Bill Number: SB5039 ER

House of Origin	<input type="checkbox"/> Introduced	<input type="checkbox"/> Substitute	<input type="checkbox"/> Engrossed
Second House	<input type="checkbox"/> In Committee	<input type="checkbox"/> Substitute	<input checked="" type="checkbox"/> Enrolled

2. Patron: Marsden

3. Committee: Passed both Houses

4. Title: Emergency Services and Disaster Law; powers and duties of Governor, purchase of PPE

5. Summary: The enrolled bill provides that during a disaster caused by a communicable disease of public health threat for which a state of emergency has been declared to establish a program through which the Governor may purchase PPE for private, nongovernmental entities and distribute the PPE to such private, nongovernmental entities. It further provides, that if federal funding is available to establish and fund the program, the Governor, if necessary to comply with any conditions attached to such federal funding, is entitled to seek reimbursement for such purchases from the private, nongovernmental entities and may establish and charge fees to recover the cost of administering the program, including the cost of procuring and distributing the PPE.

However, if federal funding is not available to establish and fund the program, the Governor must, prior to making such purchases, receive a contract for payment for purchase from the private nongovernmental entities for the full cost of procuring and distributing the PPE, which shall include any amortized costs of administering the program.

Any purchase made by the Governor pursuant to this subdivision shall be exempt from the provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq.), except the Governor shall be encouraged to comply with the provisions of § 2.2-4310 (Discrimination prohibited; participation of small, women-owned, minority-owned, and service disabled veteran-owned businesses and employment services organizations) when possible. The Governor also must provide for competition where practicable and include a written statement regarding the basis for awarding any contract. Prior to implementing such a program, the Department of Emergency Management shall consult with and survey private, nongovernmental entities in order to assess demand for participation in the program as well as the quantity and types of personal protective equipment such entities would like to procure.

As used in this subdivision, "personal protective equipment" or "PPE" means equipment or supplies worn or employed to minimize exposure to hazards that cause serious workplace injuries and illnesses and may include items such as gloves, safety glasses and shoes, earplugs or muffs, hard hats, respirators, coveralls, vests, full body suits, hand sanitizer, plastic shields, or testing for the communicable disease of public health threat.

6. **Budget Amendment Necessary:** Indeterminate.
7. **Fiscal Impact Estimates:** Final. See Item 8 below.
8. **Fiscal Implications:** Currently, in the case of a declaration of a state of emergency as defined in § 44-146.16, the Governor is authorized to expend from all funds of the state treasury not constitutionally restricted, a sum sufficient pursuant to Item 55, Chapter 1289 Acts of Assembly. A sum sufficient appropriation is additional spending authority provided by the Governor to reimburse state agencies and localities for eligible costs incurred in preparing for, responding to, and recovering from a man-made or natural disaster (includes mitigation).

In the case of a presidentially declared disaster, the Federal Emergency Management Agency (FEMA) generally provides assistance under various programs to the Commonwealth, including FEMA's Public Assistance (PA) grant, which provides funding for emergency protective measures to respond to the disaster. However, only state, territorial, tribal, and local government entities and certain private, non-profit organizations are eligible to apply for assistance through FEMA's PA grant; other private entities are not eligible.

The enrolled bill allows the Governor to establish a program to purchase and distribute PPE to private, nongovernmental entities when a state of emergency has been declared for a communicable-disease public health threat using federal funds, if available. If federal funding is available to establish and fund the program, the Governor, if necessary to comply with any conditions attached to such federal funding, is entitled to seek reimbursement for such purchases from the private, nongovernmental entities and may establish and charge fees to recover the cost of administering the program, including the cost of procuring and distributing the PPE. It is not known at this time, if federal funding will be available to establish the program in the future.

If federal funding is not available to establish and fund the program, the Governor must, prior to making such purchases, receive a contract for payment for purchase from the private nongovernmental entities for the full cost of procuring and distributing the PPE, which must include any amortized costs of administering the program. It is not known at this time if a private entity will enter into a contractual agreement with the Commonwealth for purposes of purchasing PPE.

The bill also requires the Virginia Department of Emergency Management (VDEM), prior to implementing the private, nongovernmental entity PPE program, to consult with and survey such entities to assess demand and determine types and amounts of PPE desired. VDEM may need additional funding if the intent of this provision is for VDEM to conduct these activities before the program is established and funded. The cost of consulting and survey activities is not known at this time.

If the program is established to manage a reimbursement PPE program for private, non-governmental entities, VDEM believes it may need three additional positions - a program

manager, a logistical position, and an accounting position. The first year cost for the three positions is estimated to be \$242,500 and the second year is estimated to be \$291,000.

9. Specific Agency or Political Subdivisions Affected: Virginia Department of Emergency Management

10. Technical Amendment Necessary: No

11. Other Comments: None