

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: SB 1760

INTRODUCER: Senator Albritton

SUBJECT: Personal Protective Equipment

DATE: March 29, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Stallard</u>	<u>Caldwell</u>	<u>MS</u>	Favorable
2.	<u>Ponder</u>	<u>McVane</u>	<u>GO</u>	Favorable
3.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 1760 requires the Division of Emergency Management to ensure that doctors, nurses, and other health care practitioners will be able to purchase personal protective equipment in the event of a declared emergency caused by an infectious or communicable disease. Examples of personal protective equipment include respirators, gloves, gowns, and masks.

In order to ensure the availability of these items, the division must complete an inventory of the personal protective equipment “held in reserve.” In light of this inventory, the division must procure additional equipment or arrange by contract for it to be sold to health care workers in the event of a health emergency.

The equipment must be available for purchase by the health care practitioners or their employers at the cost for which it was procured, and the equipment may not be resold at a higher price.

The bill takes effect July 1, 2021.

II. Present Situation:

Florida Division of Emergency Management

In the State Emergency Management Act (Act), the Legislature created the Division of Emergency Management within the Executive Office of the Governor.¹ The division is responsible for “maintaining a comprehensive statewide program of emergency management.”² The division is also “responsible for coordination with efforts of the Federal Government with

¹ See ss. 252.32(1) and 252.34(3), F.S.

² Section 252.35(1), F.S.

other departments and agencies of state government, with county and municipal governments and school boards, and with private agencies that have a role in emergency management.”³

“Emergency management” is defined as the preparation for, mitigation of, response to, and recovery from emergencies and disasters.⁴ Specific emergency management responsibilities include, but are not limited to:

- Reduction of vulnerability of people and communities of Florida to damage, injury, and loss of life and property resulting from natural, technological, or man-made emergencies or hostile military or paramilitary action;
- Preparation for prompt and efficient response and recovery to protect lives and property affected by emergencies;
- Response to emergencies using all systems, plans, and resources necessary to preserve adequately the health, safety, and welfare of persons or property affected by an emergency;
- Recovery from emergencies by providing for the rapid and orderly start of restoration and rehabilitation of persons and property affected by emergencies;
- Provision of an emergency management system embodying all aspects of preemergency preparedness and postemergency response, recovery, and mitigation; and
- Assistance in anticipation, recognition, appraisal, prevention, and mitigation of emergencies that may be caused or aggravated by inadequate planning for, and regulation of, public and private facilities and land use.⁵

The division is also responsible for establishing a statewide system to facilitate the transport and distribution of essentials in commerce during a declared emergency.⁶ The division must develop a system to certify persons who transport or distribute essentials and may only certify those who routinely transport or distribute essentials.⁷

Persons certified by the division need not satisfy any other requirement to transport or distribute essentials in an emergency.⁸ In developing the certification system, the division:

- May provide for a preemergency or postemergency declaration certification;
- Must allow the certification of an employer, if requested by the employer, to constitute a certification of the employer’s employees;
- Must create an easily recognizable indicium of certification to assist local officials' efforts in determining which persons have been certified; and
- Must limit the duration of each certificate to no more than 1 year. Each certificate may be renewed so long as the criteria for certification are met.⁹

³ *Id.*

⁴ Section 252.34(5), F.S.

⁵ Section 252.34(5)(a)-(f), F.S.

⁶ Section 252.359(1), F.S.

⁷ Section 252.359(3), F.S. Section 252.359(2), F.S., defines “essentials” for such purposes to mean goods that are consumed or used as a direct result of a declared emergency or that are consumed or used to preserve, protect, or sustain life, health, safety, or economic well-being.

⁸ Section 252.359(4), F.S.

⁹ Section 252.359(3)(a)-(d), F.S.

The division is charged with “carrying out” the Act, which includes the duty to prepare and maintain the state’s comprehensive emergency management plan.¹⁰ This plan must be integrated and coordinated with the plans and programs of the federal government.¹¹ The emergency management plan must include:

- An evacuation component that includes specific regional and interregional planning provisions and promotes the intergovernmental coordination of evacuation activities;¹²
- A shelter component that includes specific regional and interregional planning provisions and promotes the coordination of shelter activities between the public, private, and nonprofit sectors;¹³
- A postdisaster response and recovery component that includes specific regional and interregional planning provisions and promotes intergovernmental coordination of postdisaster response and recovery activities;¹⁴ and
- Additional provisions addressing aspects of preparedness, response, recovery, and mitigation as determined necessary by the division.¹⁵

Other duties of the division include cooperating with various partners in emergency management and coordinating several aspects of the state’s emergency management apparatus. In more detail, the division must:

- Cooperate with the President, the heads of the Armed Forces, the various federal emergency management agencies, and the officers and agencies of other states in matters pertaining to emergency management in the state and the nation;¹⁶
- Coordinate federal, state, and local emergency management activities and take all other steps to ensure the availability of adequately trained and equipped forces of emergency management personnel before, during, and after emergencies and disasters;¹⁷ and

¹⁰ Section 252.35(2), F.S.

¹¹ Section 252.35(2)(a), F.S.

¹² Section 252.35(2)(a)1., F.S. This section further provides that, at a minimum, this component must contain guidelines for lifting tolls on state highways, ensure coordination pertaining to evacuees crossing county lines, set forth procedures for directing people caught on evacuation routes to safe shelter, establish strategies for ensuring sufficient, reasonably priced fueling locations along evacuation routes, and establish policies and strategies for emergency medical evacuations.

¹³ Section 252.35(2)(a)2., F.S. This section further provides that, at a minimum, this component must contain strategies to ensure the availability of adequate public shelter space in each region of the state, establish strategies for refuge-of-last-resort programs, provide strategies to assist local emergency management efforts to ensure that adequate staffing plans exist for all shelters, including medical and security personnel, provide for a postdisaster communications system for public shelters, establish model shelter guidelines for operations, registration, inventory, power generation capability, information management, and staffing, and set forth policy guidance for sheltering people with special needs.

¹⁴ Section 252.35(2)(a)3., F.S. This component must, at a minimum, establish the structure of the state's postdisaster response and recovery organization, establish procedures for activating the state's plan, set forth policies used to guide postdisaster response and recovery activities, describe the chain of command during the postdisaster response and recovery period, describe initial and continuous postdisaster response and recovery actions, identify the roles and responsibilities of each involved agency and organization, provide for a comprehensive communications plan, establish procedures for monitoring mutual aid agreements, provide for rapid impact assessment teams, ensure the availability of an effective statewide urban search and rescue program coordinated with the fire services, ensure the existence of a comprehensive statewide medical care and relief plan administered by the Department of Health, and establish systems for coordinating volunteers and accepting and distributing donated funds and goods.

¹⁵ Section 252.35(2)(a)4., F.S.; *See* Rule 27P-2.002 et seq., F.A.C.

¹⁶ Section 252.35(2)(e), F.S.

¹⁷ Section 252.35(2)(l), F.S.

- Cooperate with the Federal Government and any public or private entity in achieving any purpose of the State Emergency Management Act and in implementing programs for mitigation, preparation, response, and recovery.¹⁸

The division is also responsible for various educational and outreach tasks. It is charged with instituting statewide public awareness programs, to include a public educational campaign on emergency preparedness issues. In cooperation with the Department of Education, the division must coordinate with the Agency for Persons with Disabilities to provide an educational outreach program on disaster preparedness and readiness to individuals who have limited English skills and identify persons who are in need of assistance but are not defined under special-needs criteria. Additionally, the division must assist political subdivisions with the creation and training of urban search and rescue teams, and promote the development and maintenance of a state urban search and rescue program.¹⁹

Finally, the division is responsible for keeping inventories of equipment that may be needed during an emergency. In this area, the division must:

- In accordance with the state comprehensive emergency management plan and program for emergency management:
 - Ascertain the requirements of the state and its political subdivisions for equipment and supplies of all kinds in the event of an emergency.²⁰
 - Plan for and either procure supplies, medicines, materials, and equipment or enter into memoranda of agreement or open purchase orders that will ensure their availability.²¹
 - Use and employ from time to time any of the property, services, and resources within the state in accordance with the Act.²²
- Complete an inventory of portable generators which are capable of operating during a major disaster, identifying, at a minimum, the:
 - Location of each generator.
 - Number of generators stored at each specific location.
 - Agency to which each generator belongs.
 - Primary use of the generator by the owner agency.
 - Names, addresses, and telephone numbers of persons having the authority to loan the stored generators as authorized by the division during a declared emergency.²³
- Maintain an inventory list of generators owned by the state and local governments. In addition, the division may keep a list of private entities, along with appropriate contact information, which offer generators for sale or lease.²⁴

Personal Protective Equipment

Personal protective equipment (PPE) refers to protective clothing, helmets, gloves, face shields, goggles, facemasks, respirators, or other equipment designed to protect a person from injury or

¹⁸ Section 252.35(2)(x), F.S.

¹⁹ Section 252.35(2)(u), F.S.

²⁰ Section 252.35(2)(g), F.S.

²¹ *Id.*

²² *Id.*

²³ Section 252.35(2)(s), F.S.

²⁴ Section 252.35(2)(t), F.S.

the spread of infection or illness. PPE is commonly used in health care settings to act as a barrier between infectious materials such as viral and bacterial contaminants and a person's skin, mouth, nose, or eyes, to block transmission of contaminants from blood, bodily fluids, or respiratory secretions. PPE is also used to protect patients who are at high risk for contracting infections brought in by visitors and healthcare workers.²⁵

The COVID-19 Pandemic²⁶ increased the need for PPE for healthcare workers, patients, and the general public, resulting in PPE shortages nationwide. Some healthcare facilities were unable to access appropriate PPE, forcing them to identify alternative means to protect healthcare workers and provide adequate patient care.

The Centers for Disease Control and Prevention (CDC) released guidance for optimizing PPE during a shortage. One of the CDC's strategies includes utilizing a burn rate calculator, which estimates how long remaining supply of PPE will last based on average consumption rates.²⁷ PPE is subject to expiration, which varies depending on the manufacturer's guidance, the product type, usage rate, and the environment it is used or stored in. The CDC offers guidance for using expired PPE depending on the capacity in which the PPE is needed for. Due to PPE shortages, the Florida Department of Business and Professional Regulation issued an emergency order suspending the provisions of s. 499.006(9), F.S., as they relate to the expiration date of PPE on March 23, 2020.²⁸

III. Effect of Proposed Changes:

The bill amends s. 252.35, F.S., to require the Division of Emergency Management to complete an inventory of personal protective equipment (PPE), such as respirators, gloves, gowns, and masks that are used to protect the wearer from illness during a declared emergency caused by an infectious or communicable disease, which are held in reserve.

The division must plan for and procure PPE, or have sufficient standby logistic contracts in place that will ensure the availability of PPE, in the event of a declared emergency caused by an infectious or communicable disease. Such PPE must be available for purchase by a health care practitioner as defined in s. 456.001, F.S., or an employer of a health care practitioner at the cost

²⁵ U.S. Food and Drug Administration, *Personal Protective Equipment for Infection Control* (Feb. 10, 2021), <https://www.fda.gov/medical-devices/general-hospital-devices-and-supplies/personal-protective-equipment-infection-control> (last visited Mar. 30, 2021).

²⁶ In December 2019, an outbreak of a new strain of coronavirus, called Severe Acute Respiratory Syndrome Coronavirus 2, emerged in China. The disease caused by this strain of the coronavirus, coronavirus disease 2019 (COVID-19), quickly spread worldwide. COVID-19 causes a wide range of symptoms including fever, cough, difficulty breathing, fatigue, loss of taste or smell, sore throat, and congestion or runny nose. The U.S. reported its first known case of COVID-19 in January 2020, and its first known death in February 2020. In March 2020, Florida reported both the state's first known COVID-19 case and death. On March 11, 2020, the World Health Organization declared COVID-19 a pandemic. See National Institute of Allergy and Infectious Diseases, *Coronaviruses*, <https://www.niaid.nih.gov/diseases-conditions/coronaviruses> (last visited Mar. 30, 2021).

²⁷ Centers for Disease Control and Prevention, *Optimizing Supply of PPE and Other Equipment during Shortages* (Jul. 16, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/hcp/ppe-strategy/general-optimization-strategies.html> (last visited Mar. 30, 2021).

²⁸ Fla. Emergency Order No. 2020-02, Department of Business and Professional Regulation (Mar. 23, 2020).

procured or negotiated by the division.²⁹ The bill prohibits the division from reselling the PPE at a price that exceeds the purchase price.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

²⁹ Section 456.001, F.S. defines “health care practitioner” to mean means any person licensed under chapter 457 (acupuncture); chapter 458 (medical practice); chapter 459 (osteopathic medicine); chapter 460 (chiropractic medicine); chapter 461 (podiatric medicine); chapter 462 (naturapathy); chapter 463 (optometry); chapter 464 (nursing); chapter 465 (pharmacy); chapter 466 (dentistry, dental hygiene, and dental laboratories); chapter 467 (midwifery); part I (speech-language pathology and audiology), part II (nursing home administration), part III (occupational therapy), part V (respiratory therapy), part X (dietetics and nutrition practice), part XIII (athletic trainers), or part XIV (orthotics, prosthetics, and pedorthics) of chapter 468; chapter 478 (electrolysis); chapter 480 (massage practice); part I or part II of chapter 483 (health testing services); chapter 484 (dispensing of optical devices and hearing aids); chapter 486 (physical therapy practice); chapter 490 (psychological services); or chapter 491 (clinical, counseling, and psychotherapy services).

B. Private Sector Impact:

The bill may have a positive fiscal impact because it ensures that personal protective equipment (PPE) necessary for health care practitioners and their employers to conduct their practices will be available for purchase at cost to the division.

C. Government Sector Impact:

The bill may have a positive fiscal impact on the government sector in allowing access to qualifying health care practitioners and their employers to PPE for purchase so they may continue to conduct their practices. The bill may have a negative fiscal impact on the division to the extent it needs to procure sufficient PPE and reprocurer expired PPE.

VI. Technical Deficiencies:

The bill amends s. 252.35(2), F.S., by adding a paragraph (z) as the last item on a list of duties of the division. However, under current law, subparagraph (y) is a catch-all provision that states “[d]o other things necessary, incidental, or appropriate for the implementation of ss. 252.31-252.90.” Accordingly, the Legislature may wish to amend the bill to replace subparagraph (y) and renumber (y) to (z).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 252.35 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.