

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 1044

SPONSOR: Senator Clary

SUBJECT: State Purchasing of Printer and Duplicator Cartridges

DATE: February 27, 2000

REVISED: 03/07/00 \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>White</u>	<u>Wilson</u>	<u>GO</u>	<u>Fav/3 amendments</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

## I. Summary:

Under the bill, state agencies cannot purchase any printer or duplication cartridge from a vendor which places restrictions on the remanufacturing or recycling of the cartridge by any other person, except that a vendor may require the state agency to return the cartridge to the vendor if the vendor recycles or remanufactures the cartridge.

This bill creates section 287.053, Florida Statutes.

## II. Present Situation:

When a toner cartridge for printer or duplicating equipment has been used, it can be recycled for use in making other products or remanufactured without substantial change to its present form for reuse. In recent years, some manufacturers of new toner cartridges have begun placing restrictions in purchasing agreements on the recycle or remanufacture of used toner cartridges. For example, some companies have required the purchaser to agree to not recycle or remanufacture the cartridge, or agree to return the cartridge to the manufacturing company so it may dispose of the cartridge without recycling or remanufacturing it.<sup>1</sup>

In response to these business practices, several states, including California and Connecticut, have enacted legislation which prohibits state purchases of cartridges from manufacturers which prevent the recycling or remanufacturing of used cartridges.<sup>2</sup> Proponents of this type of

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<sup>1</sup> Lexmark, International, headquartered in Kentucky, in the past has sold some of its laser printer toner cartridges under what it termed the *Prebate Program*. Under *Prebate*, the company offered a purchaser a \$30 discount on a \$229 toner cartridge if the buyer agreed that the cartridge could not be reused or refilled. *Wall Street Journal*, "Printer Wars: Toner Discount Incites Rivals", April 10, 1998. Effectively, the buyer was required to throw the cartridge away after use. It appears, however, that Lexmark has since reformed the *Prebate Program*. According to Lexmark's current web page, buyers are now required to return a cartridge purchased under the *Prebate Program* to the company for the purpose of remanufacturing or recycling the cartridge.

<sup>2</sup> Cal. Pub. Con. Code s. 12156 (West 2000); Public Act No. 99-213, Laws of Connecticut.

legislation argue that it furthers public policy which promotes recycling, and increases the supply of used toner cartridges available to companies which remanufacture the cartridges.<sup>3 4</sup> Opponents to this type of legislation argue that remanufactured cartridges are often inferior, and that manufacturers of cartridges should be permitted to maintain quality control of cartridges by restricting their remanufacture.<sup>5</sup>

Currently, Florida law promotes recycling by requiring the Department of Management Services (DMS) and state agencies<sup>6</sup> to develop procedures to procure where feasible products and materials which may be recycled or reused when the items have served their intended purpose.<sup>7</sup> Moreover, the DMS and state agencies are required to determine which products or materials with recycled content can be procured by the state, and the amount of recycled content that can technologically be contained in the products or materials.<sup>8</sup> A vendor bidding for state contracts must certify in writing whether its product contains recycled content, and if it does, the vendor may be eligible for up to a 15 percent contracting price preference.<sup>9</sup>

These general recycling provisions apply to state purchases of toner cartridges. Thus, state agencies should, when possible, purchase recycled cartridges or new cartridges which can be recycled or remanufactured. Florida law, however, does not expressly prohibit state agencies from purchasing toner cartridges from vendors who may contractually prevent the recycle or remanufacture of used cartridges by requiring the cartridge to be thrown away or returned to the company after its use.

Presently, none of the state's purchasing contracts administered by the DMS for printer, copier, and facsimile equipment and supplies, including cartridges, have vendor provisions which restrict the recycling or remanufacturing of cartridges. The only state contract which addresses a relevant subject is entitled, "Laser Printer Cartridges, New & Remanufactured."<sup>10</sup> Per this contract, the state is free to dispose of the cartridges it purchases in the manner it chooses, and may elect to purchase remanufactured cartridges. Remanufacturing of cartridges used by state agencies is encouraged by the contract in that when a state agency purchases a remanufactured cartridge, it is

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<sup>3</sup> See California Bill Analysis for AB 1497.

<sup>4</sup> In 1998, it was estimated that the toner cartridge remanufacturing business was a \$5 billion-a-year national industry. *The Wall Street Journal*, "Printer Wars: Toner Discount Incites Rivals", April 10, 1998. There are 388 companies with more than 2,173 employees in Florida which remanufacture toner cartridges. According to industry representatives for Florida remanufacturers, 2,439 tons of waste are kept out of Florida landfills each year as a result of remanufacturing.

<sup>5</sup> See California Bill Analysis for AB 1497.

<sup>6</sup> For purposes of Chapter 287, Part I, the term "agency" is defined as: "[A]ny of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. 'Agency' does not include the Board of Regents or the State University System." Section 287.012, F.S.

<sup>7</sup> Section 287.045(2), F.S.; See also ss. 403.702 and 403.7065, F.S.

<sup>8</sup> Section 287.045(3), F.S.

<sup>9</sup> Sections 287.045(4)-(5), F.S.

<sup>10</sup> State Contract No. 250-450-99-1.

not only obligated to pay between \$1 and \$45, but is also required to submit a used toner cartridge to the vendor so that it may be remanufactured. Furthermore, in order to insure the quality of remanufactured cartridges, the state contract explicitly defines the remanufacturing process that must be used for the product.

### III. Effect of Proposed Changes:

**Section 1.** The bill creates s. 287.053, F.S., to prohibit state agencies<sup>11</sup> from purchasing any printer or duplication cartridge from a vendor which places restrictions on the remanufacturing or recycling of the cartridge by any other person. The prohibited restrictions include, but are not limited to:

- \*reducing the cartridge's price in exchange for an agreement not to remanufacture the cartridge;
- \*requiring a licensing agreement that forbids the remanufacture of the cartridge; and
- \*requiring a contract that forbids the remanufacturing or recycling of the cartridge.

A vendor, however, which has a recycling or remanufacturing program available, may require that the agency purchasing cartridges return the used cartridge to the vendor in order for the vendor to make remanufactured or recycled cartridges.

The term "printer or duplication cartridge" is defined as, "a cartridge, including, but not limited to, a toner or ink cartridge used in printer or duplication equipment." A "remanufactured cartridge" is defined as, "a printer or duplication cartridge that has served its intended use, but rather than being discarded or disposed of, has been restored, renovated, repaired, or recharged without substantial alteration of its form." A "recycled cartridge" is defined as, "a printer or duplication cartridge that would otherwise become solid waste but that has undergone a process of collecting, treating, or reconstituting and has been returned for the manufacture of new products or for making remanufactured cartridges."

The bill requires state agencies to indicate in its bid packet for printer or duplicator cartridges that it is unlawful to prohibit the recycle or remanufacture of printer or duplication cartridges sold to the state, except that an entity may require the return of the used cartridges for recycling or remanufacturing if it has a recycling or remanufacturing program available.

Finally, the bill requires the Department of Management Services to adopt rules to administer the section.

**Section 2.** The bill takes effect upon becoming a law.

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<sup>11</sup> See Footnote 6 for the definition of "agency."

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

Pursuant to the bill, vendors of printer or duplication cartridges wishing to enter purchasing contracts with the state will be required to either: (1) permit the state purchaser to recycle or remanufacture the used cartridge; or (2) require the state purchaser to return the cartridge to the vendor to allow the vendor to recycle or remanufacture the cartridge.

## C. Government Sector Impact:

This bill should not have a negative fiscal impact on the state. As discussed in the "Present Situation" analysis, the state's existing purchasing contracts are not in contravention of the bill's requirements as none of these contracts contain clauses by the vendor which restrict the remanufacture or recycle of used cartridges. In fact, the state contract for laser printer cartridges promotes remanufacturing by requiring a used cartridge to be submitted when purchasing remanufactured cartridges. Consequently, it appears that the bill will not preclude the state from obtaining the lowest prices for cartridges, given that in the past the state has not had to agree to restrictions in order to obtain the lowest prices, even though existing law does not expressly prohibit vendors from attempting to contractually restrict the recycle or remanufacture of cartridges.

**VI. Technical Deficiencies:**

On page two, line two of the bill, it appears a typographical error was made, and that the term "alteration" should be substituted for "alternation."

**VII. Related Issues:**

None.

**VIII. Amendments:**

#1 by Governmental Oversight and Productivity:

Limits the definition of “recycled cartridge” to a cartridge which has been processed for the manufacture of new products.

#2 by Governmental Oversight and Productivity:

Corrects a misspelling of the word “alteration.”

#3 by Governmental Oversight and Productivity:

Changes the purposes for which a vendor may require a state agency to return a used cartridge to either making remanufactured cartridges available for sale or recycling.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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