

**STORAGE NAME:** h0361.ca

**DATE:** January 24, 2000

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
COMMITTEE ON COMMUNITY AFFAIRS  
ANALYSIS**

**BILL #:** HB 361

**RELATING TO:** Recovered Materials Dealers

**SPONSOR(S):** Representative Tullis

**TIED BILL(S):** None

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

- (1) COMMUNITY AFFAIRS (PRC)
  - (2) ENVIRONMENTAL PROTECTION (RLC)
  - (3) GENERAL GOVERNMENT APPROPRIATIONS (FRC)
  - (4)
  - (5)
- 

**I. SUMMARY:**

The bill provides that the registration fee charged to a recovered materials dealer by a local government may not exceed that charged by the Department of Environmental Protection. The bill also prohibits a local government from requiring a certified recovery dealer to enter into a franchise agreement in order to enter into a contract with a commercial establishment within the local government's jurisdiction.

This bill has no impact on the state's general revenue fund. Potentially, local government revenues may be impacted by limiting the registration fee and the franchise agreements.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |                              |                             |                                         |
|-----------------------------------|------------------------------|-----------------------------|-----------------------------------------|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Recovered materials, as defined by section 403.703, Florida Statutes, are metal, glass, plastic, textile, or rubber materials that have known recycling potential, can be feasibly recycled, and which have been diverted and source separated or which have been removed from the solid waste stream for sale, use, or reuse as raw materials.

Regulation of recovered materials is governed by section 403.7046, Florida Statutes. Subsection (1) provides for the establishment of a registration program by the Department of Environmental Protection (DEP) for which the DEP may charge up to \$50 for each registration.

Subsection (3) governs the relationship between local governments and those involved in the recovered materials business within their jurisdictions.

Section 403.7046(3)(b), Florida Statutes, currently provides that a local government may "charge the dealer a registration fee commensurate with and no greater than the cost incurred by the local government in operating its registration program."

Section 403.7046(3)(d), Florida Statutes, allows a local government to enter into a nonexclusive franchise or to otherwise provide for the collection, transportation, and processing of recovered materials at a commercial establishment as long as a certified recovered materials dealer is not prohibited from entering into a contract with a commercial establishment.

C. EFFECT OF PROPOSED CHANGES:

The bill amends section 403.7046(3)(b), Florida Statutes, to provide that the registration fee charged to a recovered materials dealer by a local government may not exceed the registration fee the DEP is authorized to charge pursuant to 403.7046(1), Florida Statutes. A local government, like the DEP, would be permitted to charge a fee of up to \$50 for each registration.

The bill also changes the limitation on the power of local governments to enter into a nonexclusive franchise or to otherwise provide for the collection, transportation, and processing of recovered materials. Rather than preventing a local government from prohibiting a certified recovered materials dealer from entering into a contract with a

commercial establishment, the changes the bill seeks prevent a local government from requiring a certified recovery dealer to enter into a franchise agreement in order to enter into a contract with a commercial establishment within the local government's jurisdiction.

**D. SECTION-BY-SECTION ANALYSIS:**

**Section 1** -- Amends section 403.7046(3), Florida Statutes, to provide that the registration fee charged to a recovered materials dealer by a local government may not exceed that charged by the Department of Environmental Protection. The bill also prohibits a local government from requiring a certified recovery dealer to enter into a franchise agreement in order to enter into a contract with a commercial establishment within the local government's jurisdiction.

**Section 2** -- Provides for an effective date of upon becoming law.

**III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

This bill has no direct effect on state revenues.

2. Expenditures:

This bill has no direct effect on state expenditures.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

This bill could impact local government revenues in two ways. First, the bill provides that the registration fee charged to a recovered materials dealer by a local government may not exceed that charged by the DEP. Thus, rather than having a fee that is commensurate with and no greater than the cost incurred by the operation of the registration program, local governments would only be able to charge a fee equivalent to that DEP is authorized to charge, \$50.

The bill also prohibits a local government from requiring a certified recovery dealer to enter into a franchise agreement in order to enter into a contract with a commercial establishment within the local government's jurisdiction. Franchise agreements can involve franchise fees which are a source of local government revenue. The exact amount of franchise fees derived from such agreements, however, is unknown.

2. Expenditures:

This bill has no direct effect on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The direct economic impact on the private sector is difficult to quantify. The change to the registration fee calculation and the prohibition that a local government may not require a franchise agreement in order to enter into a contract with a commercial establishment within the local government's jurisdiction could potentially impact those persons in the recovery business.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take any actions requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority of counties or municipalities to raise revenues in the aggregate, as such authority existed on February 1, 1989.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties and municipalities as an aggregate, as such existed on February 1, 1989.

V. COMMENTS:

An ordinance passed by the City of Coral Springs is illustrative of legislation that has been passed by other municipalities. This ordinance, for which implementation has been delayed due to pending litigation, established a registration fee of \$250 and a franchise fee of 15% of the franchisee's annual gross receipts for all customers located within the city.

DEP Secretary David Struhs wrote a letter to the Mayor of the City of Coral Springs opposing this ordinance in which he said:

"Like you, we are concerned with the illegal disposal (which often violates local solid waste franchises) of solid waste, under the guise of recycling -- so-called 'sham recycling.' It is for that reason that a state certification system was put in place for recovered materials dealers, and a similar registration program is authorized at the local level.

However, we are not clear why you are requiring a franchise for Certified Recovered Materials Dealers to contract for the collection of commercially generated recovered materials. The Department is concerned that the implementation of such a franchise system will impede legitimate recycling of recovered materials. We intend to support proposed House Bill 361 in the 2000 Legislative Session, which would prohibit such franchises, and urge you and the Commission to reconsider the portion of Ordinance 99-129 which requires franchises."

The Florida League of Cities (FLC) has indicated that they have some concerns about the bill:

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- 1) The bill limits the power of local governments to establish franchise agreements
- 2) The legislation could limit the power of local governments to regulate important health, safety, and welfare aspects of recovered materials such as the condition of containers, the timing of pick-up, and where containers are located on the property.
- 3) The bill may prevent municipalities from having a mechanism for recovering costs related to the use of roads and rights of way which can be attributed to recovered materials dealers.

Supporters of the bill believe this legislation is necessary to clarify the intent of the Legislature with respect to recovered materials dealers. Specifically they argue that:

- 1) The intent of the Legislature is for "recovered materials" to be distinguished from "solid waste."
- 2) The current legislative scheme is designed to encourage commercial establishments to contract with certified recovered materials dealers rather than disposing of those materials as solid waste.
- 3) The trend by local governments in imposing additional regulatory, reporting, and economic burdens on recovered materials dealers, beyond those contemplated by statute, frustrates the intent of the Legislature and will lead to "an uncontrolled checkerboard of varying and potentially conflicting local regulatory and reporting obligations."

Amendments to Section 403.7046, Florida Statutes, since 1993:

- Chapter 93-207, section 12, created section 403.7046, Florida Statutes.
- Chapter 95-311, section 5, limited the reporting process certain counties and municipalities could implement to the regulations, reporting format, and reporting frequency established by the department.
- Chapter 95-366, section 2, reenacted subsection (2) and subsection (3), and subsection (3)(b) of section 403.7046, Florida Statutes which were repealed as specified at the time in section 119.07(3)(a).
- Chapter 96-406 deleted the provision which made exempted information subject to review under the Open Government in the Sunshine Review Act.

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

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C. OTHER COMMENTS:

Identical bill: SB 436 by Senator Hargrett

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

Staff Director:

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Kyle V. Mitchell

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Joan Highsmith-Smith