

STORAGE NAME: h0909.go
DATE: March 1, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
GOVERNMENTAL OPERATIONS
ANALYSIS**

BILL #: HB 909
RELATING TO: Procurement of Personal Property
SPONSOR(S): Representative Ogles
TIED BILL(S):

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

- (1) GOVERNMENTAL OPERATIONS
 - (2) GENERAL GOVERNMENT APPROPRIATIONS
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

Under current law, s. 287.045, F.S., the Department of Management Services is required to review and revise procurement procedures so that they do not discriminate against products with recycled content. The department and each state agency must review and revise its procurement procedures to ensure to the maximum extent feasible that each agency uses state contracts to purchase products that may be recycled or reused when the products are discarded. As part of the review required, the department and state agencies shall determine the products available with recycled content and how much recycled content is technologically possible for each product. In awarding a contract for the purchase of a product, the department or an agency may allow up to a 10 percent price preference to a responsive bidder, who has certified that their product contains at least the minimum of recycled content, and up to an additional 5 percent price preference, if the product is made of materials recovered within this state. A state agency, or its contractors, must procure products with recycled content if the department determines that those products are available.

This bill would expand Florida law regarding the procurement of recycled products by creating a new statute, s. 287.047, F.S., regarding the purchase of printer or duplication cartridges in terms of the state purchasing of recycled or remanufactured cartridges.

This bill prohibits state agencies from purchasing printer or duplication cartridges with restrictions, from the manufacturer, wholesaler, distributor, retailer, or remanufacturer, regarding recycling or remanufacturing the cartridges after use. However, state agencies may purchase printer or duplication cartridges from companies where there is a signed agreement for the purchaser to return the used cartridges to the company for the purpose of recycling or remanufacturing.

This bill provides that each state agency shall print a statement on the cover of its printer or duplication cartridge bid packages, notifying all bidders that state agencies are prohibited from purchasing cartridges with restrictions on the recycling or remanufacturing of the cartridge.

This bill provides rulemaking authority for the Department of Management Services under ss. 120.54 and 120.536(1), F.S., to implement this section.

This bill shall take effect upon becoming a law.

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II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input 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 checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input 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:

Under s. 287.45, F.S., the Department of Management Services (DMS), with the Department of Environmental Protection (DEP), are to review procedures for procurement of products or materials, and eliminate any procedures or specifications that explicitly discriminate against products with recycled content, unless such procedures are necessary to protect health, safety, and welfare. These agencies are to review and revise their procurement provisions and specifications for the purchase of products to determine which products or materials with recycled content could be procured by the department and other agencies and the minimum percentage of recycled content for each product. The department and other agencies must use the amounts of recycled content in issuing invitations to bid for contracts for the purchase of such products or materials. In awarding a contract for the purchase of products or materials, the department or an agency may allow up to a 10 percent price preference to a responsive bidder who has certified that the products or materials contain at least the minimum percentage of recycled content and up to additional 5 percent price preference for certifying that the products or materials are made of materials recovered in this state.

Subsection (6) of s. 287.45, F.S., defines "recycled content" as materials that have been recycled that are contained in the products or materials to be procured, including, but not limited to, paper, aluminum, steel, glass, plastics, and composted material. Under s. 287.45(10), F.S., a state agency, or person contracting with such agency with respect to work performed under contract, must procure products or materials with recycled content if the department determines those products to be reasonably available. Under s. 287.45(11), F.S., each state agency shall report annually to the department its total expenditures on, and use of, products with recycled content and the percentage of its budget that represents purchases of similar products made from virgin products.

Other states, such as Connecticut, Texas, California and New Hampshire have expanded their legislation concerning procurement of recyclable products to include provisions regarding "remanufactured" goods, or more specifically, remanufactured toner or printer cartridges. In Connecticut and California, by statute, state agencies have been prohibited from purchasing printer or toner cartridges where the original manufacturer forbids

remanufacturing or recycling of the product.¹ In Texas, state agencies shall spend not less than 8 percent of its consumable procurement budget for each fiscal year for goods that have recycled material content or are remanufactured.² The New Hampshire Governor Jeanne Shaheen issued an executive order in 1997 directing state agencies to recycle toner cartridges and purchase remanufactured toner cartridges, unless a showing is made by the agency that compliance is not economically feasible and the Director of the Division of Plant and Property Management decides to exempt the agency's specific purchase from the requirements of the executive order.³

Florida law and the Federal Trade Commission⁴ do not currently define "remanufactured", however, they do define "recyclable" and "recycled content." The Remanufacturing Industries Council International (RICI) defines a product as remanufactured if:

- Its primary components come from a used product;
- The used product is dismantled to the extent necessary to determine the condition of its components;
- The used product's components are thoroughly cleaned and made free from rust and corrosion;
- All missing, defective, broken, or substantially worn parts are either restored to sound, functionally good condition, or they are replaced with new, remanufactured, or sound, functionally good used parts;
- To put the product in sound working condition, such machining, rewinding, refinishing or other operations are performed as necessary; or
- The product is reassembled and a determination is made that it will operate like a similar new product.

RICI also states that within the imaging industry (printing, copying), the terms "remanufactured" and "recharged" are synonymous.

RICI estimates that there are 73,000 remanufacturing firms nationally with estimated total annual sales of \$53 billion.⁵

Most original equipment manufacturers (OEMs) have remanufacturing programs set up for their own equipment, where the purchasers of the equipment can return the empty toner cartridges ("empties") to the manufacturer if they choose. Some OEMs have restrictions on sending their empties to other remanufacturing firms, some even place a microchip in the toner cartridge that makes remanufacturing by any other firm impossible. The position of

¹Connecticut Statutes section 4a-67b; California Statutes section 12156.

²Texas Statutes section 2155.448.

³New Hampshire, Governor Executive Order Number 97-2.

⁴Guides for the Use of Environmental Claims, Federal Trade Commission, 16 C.F.R. 260.7(d) and (e).

⁵Remanufacturing Frequently Asked Questions, RICI, <<http://www.rici.org/frfaqust.htm>>

the OEMs is that they cannot be assured of the quality of the remanufactured product when it is remanufactured by someone else, therefore they would prefer the empties be returned to them to assure quality.

This bill specifically addresses the purchase of printer or duplication cartridges. Currently, there is no prohibition in Florida's purchasing statutes against purchasing new or remanufactured printer or duplication cartridges. In fact, the Department of Management Services reports they currently have a contract for both new and remanufactured cartridges.

C. EFFECT OF PROPOSED CHANGES:

This bill creates s. 287.047, F.S. This bill defines "printer or duplication cartridge" as a cartridge used in printer or duplication equipment, including, but not limited to, a toner or *ink* cartridge. Opponents state that the ink cartridge should not be included in this section as the recycling and remanufacturing of this product are in their infancy and the ink cartridge is difficult to recycle. Hewlett Packard reports that 75 percent of ink cartridges returned are ground up and placed in the solid waste stream.

This bill also defines "recycled," and "remanufactured" for the purposes of the section created by the bill in subsection (1). These definitions are consistent with federal and Florida law.

This bill, in subsection (2), also prohibits state agencies from purchasing printer or duplication cartridges from manufacturers, wholesalers, distributors, retailers, or remanufacturers who place restrictions on the recycling or remanufacturing of the cartridge. Such restrictions include, but are not limited to:

- Reducing the price of the cartridge in exchange for any agreement not to remanufacture the cartridge;
- A licensing agreement on the cartridge that forbids remanufacturing of the cartridge;
- Any contract that forbids the remanufacturing or recycling of the cartridge.

In subsection (3), the bill allows state agencies to purchase printer or duplication cartridges from companies that establish a recycling or remanufacturing program under which the purchaser may enter into a signed agreement consenting to the return of used cartridges to the company, but only for the following purposes:

- Recycling and remanufacturing, for the purpose of making remanufactured cartridges;
or
- Recycling.

In subsection (4), state agencies must print a statement on the cover of its printer or duplication cartridge bid packages notifying all bidders that state agencies are prohibited from purchasing cartridges from companies with the restrictions stated in subsection 2 (except as provided in subsection 2).

The Department of Management Services shall adopt rules pursuant to ss. 120.54 and 120.536(1), F.S., to implement this section.

This bill shall take effect upon becoming a law.

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

Currently, there is no prohibition in the statutes against purchasing new or remanufactured toner or duplication cartridges. State Purchasing already has a contract for toner cartridges both new and remanufactured. The Department of Management Services does not anticipate a significant fiscal impact.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill could force some companies to eliminate restrictions on the remanufacturing or recycling of their cartridges in order to get contracts with the state.

D. FISCAL COMMENTS:

N/A

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 action requiring the expenditure of funds.

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B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

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

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

This bill establishes rulemaking authority for the Department of Management Services pursuant to ss. 120.54 and 120.536(1), F.S., to implement the provisions of this bill.

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL OPERATIONS:

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