

HB 59

2009

1 A bill to be entitled
2 An act relating to state procurement; amending s. 287.045,
3 F.S.; revising provisions relating to the procurement of
4 products and materials with recycled content by the
5 Department of Management Services to include procurement
6 of remanufactured products, equipment, and instruments;
7 providing procedures and requirements with respect to such
8 procurement; requiring the department to adopt specified
9 rules; removing obsolete language; defining
10 "remanufactured"; providing an additional requirement upon
11 a decision by the Department of Management Services not to
12 procure recycled or remanufactured products, materials,
13 equipment, or instruments; amending s. 403.7065, F.S.;
14 expanding provisions which require state agencies to
15 procure products or materials with recycled content to
16 include the procurement of remanufactured products,
17 equipment, and instruments; providing an additional
18 requirement upon a decision by the Department of
19 Management Services not to procure recycled or
20 remanufactured products, materials, equipment, or
21 instruments; defining "remanufactured"; amending s.
22 403.7061, F.S.; revising provisions with respect to
23 criteria for the construction of new or the expansion of
24 existing waste-to-energy facilities, to conform; providing
25 an effective date.

26
27 Be It Enacted by the Legislature of the State of Florida:
28

29 Section 1. Section 287.045, Florida Statutes, is amended
 30 to read:

31 287.045 Procurement of products and materials with
 32 recycled content; procurement of remanufactured products,
 33 equipment, and instruments.--

34 (1) (a) The department, in cooperation with the Department
 35 of Environmental Protection, shall review and revise existing
 36 procurement procedures and specifications for the purchase of
 37 products, equipment, and materials, and instruments to eliminate
 38 any procedures and specifications that explicitly discriminate
 39 against products and materials with recycled content, or
 40 remanufactured products, equipment, or instruments, except where
 41 such procedures and specifications are necessary to protect the
 42 public health, safety, and welfare.

43 (b) Each agency shall review and revise its procurement
 44 procedures and specifications for the purchase of products,
 45 equipment, and materials, and instruments to eliminate any
 46 procedures and specifications that explicitly discriminate
 47 against products and materials with recycled content, or
 48 remanufactured products, equipment, or instruments, except if
 49 such procedures and specifications are necessary to protect the
 50 public health, safety, and welfare.

51 (2) (a) The department and each agency shall review and
 52 revise its procurement procedures and specifications for the
 53 purchase of products, equipment, and materials, and instruments
 54 to ensure to the maximum extent feasible that each agency uses
 55 state contracts to purchase products, equipment, ~~or~~ materials,
 56 or instruments that may be recycled, ~~or~~ reused, or

HB 59

2009

57 remanufactured when such ~~these~~ products, equipment, ~~or~~
58 materials, or instruments are discarded.

59 (b) The Auditor General shall assist in monitoring the
60 ~~product~~ procurement requirements of this section.

61 (3) As part of the review and revision required in
62 subsection (2), the department and each agency shall review its
63 procurement provisions and specifications for the purchase of
64 products, equipment, and materials, and instruments to determine
65 which products or materials with recycled content, and which
66 remanufactured products, equipment, or instruments, could be
67 procured by the department or other agencies and, where
68 applicable, the amount of recycled content that can
69 technologically be contained in procured ~~such~~ products or
70 materials. The department and other agencies must use the
71 amounts of recycled content and postconsumer recovered material
72 determined by the department, or state that products, equipment,
73 or instruments are remanufactured, in issuing solicitations for
74 contracts for the purchase of such products, equipment, ~~or~~
75 materials, or instruments.

76 (4) Upon completion of the review required in subsection
77 (3), the department and other agencies shall require that a
78 person who submits a bid, proposal, or reply for a contract for
79 the purchase of products, equipment, ~~or~~ materials, or
80 instruments identified in subsection (3) and who wishes to be
81 considered for the price preference described in subsection (5)
82 certify in writing the percentage of recycled content in the
83 product or material that is subject to the bid, proposal, or
84 reply or certify in writing that the products, equipment, or

85 instruments that are subject to the bid, proposal, or reply are
 86 remanufactured. A person may certify that the product or
 87 material contains no recycled content or that the product,
 88 equipment, or instrument is original equipment.

89 (5) Upon evaluation of bids, proposals, or replies for
 90 every public contract that involves the purchase of products,
 91 equipment, ~~or~~ materials, or instruments identified in subsection
 92 (3), the department or other agency shall identify the lowest
 93 responsible and responsive vendor and other responsible and
 94 responsive vendors who have certified that the products or
 95 materials contain at least the minimum percentage of recycled
 96 content and postconsumer recovered material, or who have
 97 certified that the products, equipment, or instruments are
 98 remanufactured, as ~~that is~~ set forth in the solicitation. The
 99 department or agency may consider life-cycle costing when
 100 evaluating a bid, proposal, or reply on a product that consists
 101 of recycled materials or on remanufactured products, equipment,
 102 or instruments. The department shall adopt rules that specify
 103 the criteria to be used when considering life-cycle costing in
 104 evaluating bids, proposals, or replies. The rules must take into
 105 consideration the specified warranty periods for products,
 106 equipment, or instruments and the comparative expected service
 107 life relative to the cost of the products, equipment, or
 108 instruments. In awarding a contract for the purchase of
 109 products, equipment, ~~or~~ materials, or instruments, the
 110 department or other agency may allow up to a 10-percent price
 111 preference to a responsible and responsive vendor who has
 112 certified that the products or materials contain at least the

HB 59

2009

113 minimum percentage of recycled content and postconsumer
114 recovered material, or are remanufactured products, equipment,
115 or instruments, and up to an additional 5-percent price
116 preference to a responsible and responsive vendor who has
117 certified that the products or materials ~~material~~ are made of
118 materials recovered in this state or that the products,
119 equipment, or instruments are remanufactured in this state. The
120 amount of the price preference must be commensurate with the
121 certified amounts of recycled material and postconsumer
122 recovered material and materials recycled from products in this
123 state, contained in the product or materials, or with the
124 certification that the products, equipment, or instruments are
125 remanufactured or remanufactured in this state, on a sliding
126 scale as established by department rule, ~~which rule shall not~~
127 ~~become effective prior to November 1, 1994.~~ Reusable materials
128 and products and remanufactured products, equipment, and
129 instruments shall be used where economically and technically
130 feasible. If no vendors offer products or materials with
131 measurable life-cycle costing factors or the minimum prescribed
132 recycled and postconsumer content, or remanufactured products,
133 equipment, or instruments, the contract must be awarded to the
134 lowest qualified responsible and responsive vendor.

135 (6) For the purposes of this section, the term:

136 (a) "Recycled content" means materials that have been
137 recycled that are contained in the products or materials to be
138 procured, including, but not limited to, paper, aluminum, steel,
139 glass, plastics, and composted material. The term does not
140 include the virgin component of internally generated scrap that

141 is commonly used in industrial or manufacturing processes or
 142 such waste or scrap purchased from another manufacturer who
 143 manufactures the same or a closely related product. Recycled
 144 content printing and fine writing grades of paper shall contain
 145 at least 10 percent postconsumer recovered materials.

146 (b) "Remanufactured" refers to a product, equipment, or
 147 instrument that has undergone rebuilding, repair, or restoration
 148 to meet or exceed the original equipment manufacturer's
 149 specifications and which may be sold and serviced by a third
 150 party and may carry a warranty that is different from the
 151 warranty provided by the original equipment manufacturer.

152 (7) Any person may request the department to evaluate a
 153 product or material with recycled content, or remanufactured
 154 product, equipment, or instrument, if the product, equipment, ~~or~~
 155 material, or instrument is eligible for inclusion under state
 156 contracts. The department shall review each reasonable proposal
 157 to determine its merit and, if it finds that the product,
 158 equipment, ~~or material,~~ or instrument may be used beneficially,
 159 it may incorporate that product, equipment, ~~or material,~~ or
 160 instrument into its procurement procedures.

161 (8) The department and each agency shall review and revise
 162 its procedures and specifications on a continuing basis to
 163 encourage the use of products and materials with recycled
 164 content and postconsumer recovered material, and remanufactured
 165 products, equipment, and instruments, and shall, in developing
 166 new procedures and specifications, encourage the use of products
 167 and materials with recycled content and postconsumer recovered

168 material and remanufactured products, equipment, and
 169 instruments.

170 (9) ~~After November 1, 1994,~~ The department may discontinue
 171 contracting for products or materials the recycled content of
 172 which does not meet the requirements of subsection (3), and may
 173 discontinue contracting for remanufactured products, equipment,
 174 or instruments which do not meet the requirements of subsection
 175 (3), if it determines that products, equipment, ~~or~~ materials, or
 176 instruments meeting those requirements are available at a cost
 177 not to exceed an additional 10 percent of comparable virgin
 178 products or original equipment products, equipment, or
 179 instruments.

180 (10) (a) An agency, or a vendor contracting with such
 181 agency with respect to work performed under contract, must
 182 procure products or materials with recycled content, or
 183 remanufactured products, equipment, or instruments, if the
 184 department determines that those products, equipment, ~~or~~
 185 materials, or instruments are available pursuant to subsection
 186 (5).

187 (b) Notwithstanding any other provision to the contrary,
 188 for the purpose of this section, the term "agency" means any of
 189 the various state officers, departments, boards, commissions,
 190 divisions, bureaus, and councils and any other unit of
 191 organization, however designated, of the executive branch
 192 including the Department of the Lottery, the legislative branch,
 193 the judicial branch, the university and college boards of
 194 trustees, and the state universities and colleges.

195 (c) A decision not to procure such items must be:

- 196 1. Based on the department's determination that such
 197 procurement:
 198 a. Is not reasonably available within an acceptable period
 199 of time; or
 200 b. Fails to meet the performance standards set forth in
 201 the applicable specifications; or
 202 c. Fails to meet the performance standards of the agency.

203 2. Accompanied by a detailed technological justification
 204 prepared by the department explaining the need to use or obtain
 205 products or materials that do not contain recycled content or
 206 original equipment manufacturers' products, equipment, or
 207 instruments instead of products or materials containing recycled
 208 content or remanufactured products, equipment, or instruments.

209 (11) Each agency shall report annually to the department
 210 its total expenditures on, and use of, products with recycled
 211 content and remanufactured products, equipment, or instruments
 212 and the percentage of its budget that represents purchases of
 213 similar products made from virgin materials or original
 214 equipment products, equipment, or instruments. The department
 215 shall design a uniform reporting mechanism and prepare annual
 216 summaries of statewide purchases delineating those with recycled
 217 content or consisting of remanufactured products, equipment, or
 218 instruments to be submitted to the Governor, the President of
 219 the Senate, and the Speaker of the House of Representatives.

220 Section 2. Section 403.7065, Florida Statutes, is amended
 221 to read:

222 403.7065 Procurement of products or materials with
 223 recycled content; procurement of remanufactured products,
 224 equipment, or instruments.--

225 (1) (a) Except as provided in s. 287.045, any state agency
 226 or agency of a political subdivision of the state which is using
 227 state funds, or any person contracting with any such agency with
 228 respect to work performed under contract, is required to procure
 229 products or materials with recycled content, or, where
 230 applicable, remanufactured products, equipment, or instruments,
 231 when the Department of Management Services determines that such
 232 ~~these~~ products, or materials, equipment, or instruments are
 233 available.

234 (b) A decision not to procure ~~such~~ items described in
 235 paragraph (a) must be:

236 1. Based on the Department of Management Services'
 237 determination that such procurement:

238 a. Is not reasonably available within an acceptable period
 239 of time; or

240 b. Fails to meet the performance standards set forth in
 241 the applicable specifications; or

242 c. Fails to meet the performance standards of the agency.

243 2. Accompanied by a detailed technological justification
 244 prepared by the department explaining the need to use or obtain
 245 products or materials that do not contain recycled content or
 246 original equipment manufacturers' products, equipment, or
 247 instruments instead of products or materials containing recycled
 248 content or remanufactured products, equipment, or instruments.

249 (c) When the requirements of s. 287.045 are met, agencies
250 shall be subject to the procurement requirements of that section
251 for procuring products or materials with recycled content.

252 (2) For the purposes of this section:~~7~~

253 (a) "Recycled content" means materials that have been
254 recycled that are contained in the products or materials to be
255 procured, including, but not limited to, paper, aluminum, steel,
256 plastic, glass, and composted material. The term does not
257 include the virgin component of internally generated scrap that
258 is commonly used in the industrial or manufacturing processes
259 from which it was generated or waste or scrap purchased from
260 another manufacturer who manufactures the same or a closely
261 related product.

262 (b) "Remanufactured" refers to a product, equipment, or
263 instrument that has undergone rebuilding, repair, or restoration
264 to meet or exceed the original equipment manufacturer's
265 specifications and which may be sold and serviced by a third
266 party and may carry a warranty that is different from the
267 warranty provided by the original equipment manufacturer.

268 Section 3. Paragraph (f) of subsection (3) of section
269 403.7061, Florida Statutes, is amended to read:

270 403.7061 Requirements for review of new waste-to-energy
271 facility capacity by the Department of Environmental
272 Protection.--

273 (3) An applicant must provide reasonable assurance that
274 the construction of a new waste-to-energy facility or the
275 expansion of an existing waste-to-energy facility will comply
276 with the following criteria:

HB 59

2009

277 (f) The local government in which the facility is located
278 has implemented a program to procure products or materials with
279 recycled content and remanufactured products, equipment, or
280 instruments, pursuant to s. 403.7065.

281 Section 4. This act shall take effect July 1, 2009.