

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 436

SPONSOR: Senator Hargrett

SUBJECT: Regulation of recovered materials

DATE: April 14, 2000 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Branning</u>	<u>Voigt</u>	<u>NR</u>	<u>Fav/1 amendment</u>
2.	<u>Bowman</u>	<u>Yeatman</u>	<u>CA</u>	<u>Favorable</u>
3.	<u>Keating</u>	<u>Wood</u>	<u>FR</u>	<u>Favorable</u>
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill would limit the amount of the registration fee that a local government may charge recovered materials dealers to the amount of the registration fee charged by the Department of Environmental Protection (DEP). Also, the bill would prohibit local governments from requiring recovered materials dealers to enter into nonexclusive franchise agreements with the local government in order to enter into a contract with a local commercial establishment that generates source-separated materials. This prohibition clarifies existing law which provides that such contracts are not prohibited by a local government franchise agreement with a commercial establishment.

This bill amends s. 403.7046(3), of the Florida Statutes.

II. Present Situation:

Section 403.7046, F.S., provides for the regulation of recovered materials. DEP annually certifies any person who handles, purchases, receives, recovers, sells, or is an end-user of recovered materials. The department may, by rule, exempt from this requirement generators of recovered materials, persons who handle or sell recovered materials as an activity which is incidental to the normal primary business activities of that person, or persons who handle, purchase, receive, recover, sell, or are end-users of recovered materials in small quantities as defined by the department. The department may charge a fee of up to \$50 for each registration, which shall be deposited into the Solid Waste Management Trust Fund for implementation of the program.

Subsection (3) of s. 403.7046, F.S., provides that, except as otherwise provided in this section or pursuant to a special act in effect on or before January 1, 1993, a local government may not require a commercial establishment that generates source-separated recovered materials to sell or otherwise convey such recovered materials to any properly certified recovered materials dealer. A local government is also prohibited from enacting any ordinance that prevents such a dealer from

entering into a contract with a commercial establishment to purchase, collect, transport, process, or receive source-separated recovered materials.

Pursuant to s. 403.7046(3), F.S., a recovered materials dealer must provide the local government with a copy of its certification with the DEP prior to engaging in business within the jurisdiction of the local government. In addition, the local government may establish a registration process whereby a recovered materials dealer must register with the local government prior to engaging in business within the jurisdiction of the local government. The local government registration process is limited to requiring the dealer to register:

- Its name, including the owner or operator of the dealer, and if the dealer is a business entity, its general or limited partners and its corporate officers and directors;
- Its permanent place of business;
- Evidence of its DEP certification; and
- A certification that the recovered materials will be processed at a recovered materials processing facility satisfying the requirements of this section.

All counties and municipalities whose population exceeds 35,000 may establish a reporting process which is limited to the regulations, reporting format, and reporting frequency established by the DEP which shall, at a minimum, include:

- Requiring the dealer to identify the types and approximate amount of recovered materials collected, recycled, or reused during the reporting period;
- The approximate percentage of recovered materials reused, stored, or delivered to a recovered materials processing facility or disposed of in a solid waste disposal facility; and
- The locations where any recovered materials were disposed of as solid waste.

The 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. Any reporting or registration process established by a local government with regard to recovered materials shall be governed by the provisions of s. 403.7046, F.S., and DEP rules adopted pursuant to this section.

A local government may prohibit a person or entity not certified from doing business within the jurisdiction of the local government. Also, the local government may enter into a nonexclusive franchise or to otherwise provide for the collection, transportation, and processing of recovered materials at commercial establishments provided that such franchise or provision does not prohibit a certified recovered materials dealer from entering into a contract with a commercial establishment to purchase, collect, transport, process, or receive source-separated recovered materials. The local government may enter into an exclusive franchise or to otherwise provide for the exclusive collection, transportation, and processing of recovered materials at single-family or multifamily residential properties.

Some local governments, most notably the City of Coral Springs, have passed ordinances to require registration and franchise fees. The City of Coral Springs' ordinance would require a registration fee of \$250 and a franchise fee of 15 percent of the franchisee's annual gross receipts for all customers located with the city. Implementation of the ordinance has been delayed due to pending litigation which challenges the City's authority to require a certified recovered materials dealer to enter into a franchise agreement with the city to operate within the city.

Recently, the City of Pompano Beach requested an Attorney General Opinion on the question of whether the City of Pompano Beach was authorized to adopt and enforce an ordinance requiring recovered materials dealers to enter into a nonexclusive franchise and pay a fee to the municipality in order to conduct business within the municipality.

In AGO 99-60, the Attorney General stated that:

[I]t is my opinion that section 403.7046(3), Florida Statutes, authorizes the City of Pompano Beach to adopt an ordinance requiring recovered materials dealers to enter into a non-exclusive franchise for the collection, transportation, and processing of recovered materials at commercial establishments within the city and to pay a registration fee to the municipality for the privilege of doing business within the municipality. The registration fee authorized by the statute is one that is commensurate with but no greater than the costs incurred to operate this program. However, any ordinance adopted by the municipality may not prohibit such a dealer from entering into an independent contract with a commercial establishment for source-separated recovered materials.

III. Effect of Proposed Changes:

This bill would provide that the registration fee a local government charges recovered materials dealers may not exceed the amount of the registration fee charged by the DEP. The DEP's fee may not exceed \$50.

The bill would also prohibit a local government from requiring a certified recovered materials dealer to enter into a nonexclusive franchise agreement in order to enter into a contract with any commercial establishment located within the local government's jurisdiction.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Since this bill reduces the authority of cities and counties, in the aggregate, to raise total aggregate revenues over the February 1, 1989 levels, the bill falls within the purview of subsection (b) of Article VII, Section 18, of the Florida Constitution. Currently, s. 403.7046, F.S., authorizes local governments to enter into certain nonexclusive franchise agreements. This bill would prohibit local governments from requiring recovered materials dealers to enter into such contracts in order to do business within the local government's jurisdiction.

Subsection (d) of section 18 of Article VII of the Florida Constitution, provides exemptions from all requirements of section 18 for various types of general laws, including those with

insignificant fiscal impact. If the annual revenue loss of these franchise agreements is estimated to be less than \$1.6 million, the bill would be exempt from the requirements of subsection (b) due to insignificant fiscal impact. Otherwise, the bill may only take effect if passed by two-thirds vote of the membership of each house.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The bill would restrict the amount of the registration fee to be charged by the local government to the amount charged by the DEP, which is \$50. The Revenue Estimating Conference has not reviewed SB 436.

B. Private Sector Impact:

The costs of doing business could be reduced for the recovered materials dealer if the registration fees are capped and a franchise fee is not required.

C. Government Sector Impact:

Local governments could lose the ability to raise the revenue that may be needed to recover the costs related to monitoring the activities of recovered materials dealers with regard to the health and safety aspects of picking up such materials and the costs related to the use of the roads and highways.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Natural Resources:

Clarifies that the registration program costs are limited to those costs associated with registering recovered materials dealers and establishing a reporting process.(WITH TITLE AMENDMENT)

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