

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 399 Procurement of Environmentally Preferable Cleaning Products
SPONSOR(S): Lopez-Cantera
TIED BILLS: IDEN./SIM. BILLS: SB 986

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: 1) Committee on Audit & Performance, 6 Y, 0 N, Ferguson, De La Paz.

SUMMARY ANALYSIS

HB 399 requires the Department of Management Services ("the department") and each agency to review and revise its procurement procedures and specifications for the purchase of cleaning products in order to:

- Eliminate any procedures and specifications that explicitly discriminate against cleaning products that are environmentally preferable, unless such procedures and specifications are necessary to protect the public health, safety, and welfare.
• Determine which environmentally preferable cleaning products could be procured.
• Ensure, to the maximum extent feasible, that each agency uses state contracts to purchase environmentally preferable cleaning products.
• Implement measures that avoid wasting of existing inventories, accommodates establishment of available vendors and products, enables training of personnel in appropriate work practices, and allows the phase-out of products and practices.
• Encourage the use of environmentally preferable cleaning products.

HB 399 requires any bid, proposal, or reply for a contract for the purchase of cleaning products to be certified in writing whether or not the cleaning product is environmentally preferable, and the department or agency must identify the lowest responsible and responsive vendor.

HB 399 requires environmentally preferable cleaning products to be used where economically and technically feasible unless no vendor offers environmentally preferable cleaning products with measurable life-cycle costing factors then the contract must be awarded to the lowest bidder.

HB 399 requires the department (upon request) to evaluate a cleaning product to determine if the product is eligible for inclusion under state contracts.

HB 399 requires an agency, or a vendor contracting with an agency to procure environmentally preferable cleaning products.

HB 399 requires annual reporting from each agency and the department.

HB 399 provides the department with rule-making authority

See fiscal comments.

Note: The Committee on Audit and Performance adopted a strike-all that substantially changed the bill.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government—HB 399 would require the Department of Management Services to adopt rules that specify the criteria to be used when considering life-cycle costing in evaluating bids, proposals, or replies as well as rules for the implementation of environmentally preferable cleaning product procurement, including a uniform reporting mechanism.

B. EFFECT OF PROPOSED CHANGES:

Current situation

The Division of State Purchasing (“State Purchasing”) within the Department of Management Services

State Purchasing establishes state term contracts from which agencies and other eligible users make purchases of commodities and services. However, no state term contract is currently in place for cleaning supplies, primarily because the Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE) inmate work program produces a comprehensive array of cleaning products for use by State agencies which are deemed preferred by s. 946.515 (2), F.S. In 2003, State Purchasing solicited for vendors to provide for 125 different products, most of which would classify as cleaning products. No vendors responded to the solicitations. As a result, products not provided by PRIDE are acquired through direct contracting between agencies and vendors or through alternative source contracting.

The Division of Real Estate development and Management within the Department of Management Services

The Division of Real Estate Development and Management serves as the managing agency for the state-owned Florida Facilities Pool properties. Managed under the requirements mandated by chapter’s 255 and 272, F.S., these properties consist of 21 regional facilities and 35 Tallahassee facilities, which comprises the 7.8 million, gross square feet in the Florida Facilities Pool. To fulfill the requirements of managing the state-owned properties the Division of Real Estate Development and Management utilizes private providers such services as construction, professional design, materials, supplies, equipment to perform alterations, repairs, improvements and new construction to develop and maintain the properties in accordance with the bond covenant. This includes the purchase and use of cleaning products. Of the space managed by the Division of Real Estate Development and Management 75% of custodial services is contract with a private provider that manages their own purchase of cleaning products.

The Division of Real Estate Development and Management additionally provides Project Management Oversight services for construction projects appropriated as Department of Management Services managed projects as well as for other state agencies through Client Agency Agreements. This also includes the purchase and use of cleaning products by the private providers of construction services. The Department of Management Services manages buildings within the Florida Facilities Pool, but does not manage all state-owned buildings. The State Facilities Inventory 2006 annual reports covers 3,867 buildings, which consist of 56 million gross square feet and are managed by 21 different state agencies. This inventory does not include buildings less than 3,000 square feet or the state’s university facilities.

The Division of Real Estate Development and Management is not staffed with certified professionals to assess and rank environmentally preferable cleaning products based on class or classes of cleaning chemicals.

Proposed change

Review and Revisions of Procedures and Specifications

HB 399 requires the Department of Management Services (“the department”), in cooperation with the Department of Environmental Protection, and each agency to review and revise its statewide procurement procedures and specifications for the purchase of cleaning products in order to:

- Eliminate any procedures and specifications that explicitly discriminate against cleaning products that are environmentally preferable.¹ An exception is provided for procedures and specifications that are necessary to protect the public health, safety, and welfare.
- Determine which environmentally preferable cleaning products could be procured.
- Ensure, to the maximum extent feasible, that each agency uses state contracts to purchase environmentally preferable cleaning products.
- Identify the lowest responsible and responsive vendor and other responsible and responsive vendors who have certified that the products are environmentally preferable as set forth in the solicitation.
- Encourage the use of environmentally preferable cleaning products.

Implementation Requirements

General requirements for implementation are as follows:

- Environmentally preferable cleaning products would be required where economically and technically feasible.
- Wasting of existing inventories of cleaning products would be avoided.
- Accommodate establishment of available vendors and products.
- Training of personnel in appropriate work practices.
- Allow for the phase-out of products and practices inconsistent with the provisions of this section of the statutes.
- Reference to the guidelines for environmentally preferable purchasing set forth by the United States Environmental Protection Agency.²
- Consideration of life-cycle costing when evaluating a bid, proposal, or reply on environmentally preferable cleaning products.
- If no vendor offers environmentally preferable cleaning products with measurable life-cycle costing factors, the contract shall be awarded to the lowest bidding qualified responsible and responsive vendor.

An agency or their contracted vendor would be required to procure environmentally preferable cleaning products if the agency determines that those products are available. An agency’s decision not to procure such items must be based on the determination criteria that such procurement is:

- not reasonably available within an acceptable period of time,
- fails to meet the performance standards set forth in the applicable specifications, or
- fails to meet the performance standards of the agency.

Certification

A person who submits a bid, proposal, or reply for a contract for the purchase of cleaning products must certify in writing whether the cleaning product subject to the bid, proposal, or reply is an environmentally preferable cleaning product. A person may also certify that the product is not an environmentally preferable cleaning product.

Audit Requirements

The Auditor General is required to assist in monitoring the product procurement requirements.

¹ “Environmentally preferable cleaning products” means cleaning products that have a lesser or reduced effect on human health and the environment than competing cleaning products that serve the same purpose.

² <http://www.epa.gov/opptintr/epp/pubs/guidance/finalguidancetoc.htm>

Rule Making Authority

The department would be required to adopt rules that specify the criteria to be used when considering life-cycle costing in evaluating bids, proposals, or replies. The department would also be required to establish rules for the implementation of environmentally preferable cleaning product procurement, including a uniform reporting mechanism and price preferences.

Provider Preferences

1. The department or an agency may allow up to a 10-percent price preference to a “responsible and responsive” vendor who has certified that the products are environmentally preferable.
2. An additional price preference of up to 5 percent may be allowed if the vendor is also domiciled in the state.

HB 399 would require the amount of the price preference to be commensurate with the life-cycle of the products, including raw material acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or final disposal of the products on a sliding scale as established by Department of Management Service rule.

Product Qualification

Any person may request the department to evaluate a cleaning product to determine if the product is eligible for inclusion under state contracts. The department would be required to review each reasonable proposal to determine its merit and, if it finds that the product is environmentally preferable, it may incorporate that product into its procurement procedures.

Reporting Requirements

Each agency would be required to report annually to the department its total expenditures and use of environmentally preferable cleaning products. In turn, the department would be required to prepare annual summaries of statewide environmentally preferable purchases to be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

C. SECTION DIRECTORY:

Section 1. Creates s. 287.048, F.S., requiring the Department of Management Services, in cooperation with the Department of Environmental Protection, and each agency to review and revise the statewide procurement procedure and specifications for the purchase of environmentally preferable cleaning products.

Section 2. Provides an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

According to the Division of Real Estate Development and Management, HB 399 would involve establishing specifications, rule promulgation, audits, preference determination, product assessment eligibility and tracking and reporting purchases by the Department of Management Services as well as each state agency. No funding source or FTE have been identified to perform these new tasks. The tasks identified would require the services of more than one program area within the Department of Management Services as well as the Department of Environmental Protection.

This proposed legislation provides for preference purchasing based on certified environmentally preferable products as well as if the provider is domiciled in the state. This preference is based on self-certification of products by the providers. These price preferences can add up to a 15 percent increased cost based on 10 percent for qualified product and 5 percent for a Florida owned business. A Florida owned business is not defined as to if it is the manufacturer or product supplier or both

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

HB 399 requires the Department of Management Services ("the department") to adopt rules that specify the criteria to be used when considering life-cycle costing in evaluating bids, proposals, or replies. The bill also requires the department to establish rules for the implementation of environmentally preferable cleaning product procurement, including a uniform reporting mechanism.

C. DRAFTING ISSUES OR OTHER COMMENTS:

There may be a statutory conflict between HB 399 and section 946. Section 946.515 (2), F.S., requires state agencies to purchase from the Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE) when a PRIDE commodity meets the comparable performance specifications and comparable price and quality requirements. PRIDE produces a comprehensive array of cleaning products and contends that its cleaning products are "environmentally preferable."

Section 946.515 (4), F.S., provides that part I of chapter 287 (which would include HB 399) does not apply to any purchases of commodities or contractual services made by any legislative, executive, or judicial agency.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 14, 2007, the Committee on Audit and Performance adopted an amendment to the strike-all amendment and a strike-all amendment. The amendment to the amendment expands the term “environmentally preferable cleaning products” to allow for product efficacy. The strike-all amendment does the following:

- Requires DEP to establish a certification process in determining whether a cleaning product is environmentally preferable.
- Provides criteria for DEP to follow in the certification process.
- Allows the Department of Management Services (DMS) to request DEP to evaluate any cleaning product to determine if the product is environmentally preferable.
- Requires DMS to maintain a list of products that have been certified by DEP.
- Requires DMS and each state agency to review and revise its procurement procedures to require the purchase and use of environmentally preferable cleaning products.
- Allows a five year phase-out of existing inventory to avoid waste.
- Requires persons who submit a bid, proposal, or reply for a contract for the purchase of cleaning products to have their product certified as environmentally preferable by DEP or another state agency.
- Requires DMS and each agency to identify the lowest bid, proposal, or reply from the products that have been certified as environmentally preferable. If no environmentally preferable cleaning product is available, DMS and each are required to identify the lowest bid, proposal, or reply.
- Requires persons contracting with an agency to perform services to use environmentally preferable cleaning products. If no environmentally preferable cleaning product is available, DMS and each agency are required to identify the lowest bid, proposal, or reply.
- Allows price preference (up to 10 percent) to vendors who certify their product as environmentally preferable and an additional price preference (up to 5 percent) for vendors domiciled in Florida.
- Excludes PRIDE products unless the PRIDE product has been certified by DEP as environmentally preferable.