

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Health Care Committee

BILL: CS/SB 2224

INTRODUCER: Health Care Committee and Senator Peaden

SUBJECT: Clandestine Laboratory Contamination

DATE: April 25, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Wilson	HE	Fav/CS
2.	_____	_____	CJ	_____
3.	_____	_____	JU	_____
4.	_____	_____	HA	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill specifies requirements for the quarantine of residential property to prevent the exposure of any person to the hazards associated with clandestine laboratory activities. Whenever a sheriff, police officer, or other law enforcement entity secures evidence from a residential property in which illegal clandestine laboratory activities have occurred, the Department of Health (DOH or department) must quarantine the residential property. The local law enforcement entity securing evidence must enforce a quarantine on the residential property as part of its duty to assist DOH. Enforcement does not require the 24-hour posting of law enforcement personnel. The residential property must remain quarantined until DOH receives a certificate of fitness documenting that the property has been decontaminated, as defined by DOH, demolished, or a court order is presented requiring the quarantine to be lifted.

The bill creates definitions, specifies procedures for the notification of residential property owners or managers, and requires DOH to adopt rules that establish: standards for indoor air quality regarding levels of contaminants produced by clandestine laboratory activities to include methamphetamine, lead, mercury, and volatile organic compounds, and such standards must be consistent with values commonly used by other states or comply with national standards; standards for the cleanup and testing of clandestine laboratories; and a certificate of fitness that must act as appropriate documentation that a residential property has been decontaminated in accordance with specified standards. The bill establishes a procedure for property owners to have the quarantine lifted under specified circumstances. The bill grants immunity to certain residential property owners from health-based civil actions brought by any future owner, renter, or other person who occupies such residential property, or a neighbor of such residential property, in which the alleged cause of the injury or loss is the existence of the clandestine laboratory.

This bill amends ss. 893.02, 465.016, 465.023, 856.015, 893.135, 944.47, 951.22, and 985.4046, F.S.

This bill creates ss. 893.121, 893.122, 893.123, and 893.124, F.S.

II. Present Situation:

Controlled Substances

Chapter 893, F.S., sets forth the Florida Comprehensive Drug Abuse Prevention and Control Act. The chapter classifies controlled substances into five schedules in order to regulate the manufacture, distribution, preparation, and dispensing of the substances. Substances in Schedule I have a high potential for abuse and have no currently accepted medical use in the United States. Schedule II drugs have a high potential for abuse and a severely restricted medical use. Cocaine and morphine are examples of Schedule II drugs. Schedule III controlled substances have less potential for abuse than Schedule I or Schedule II substances and have some accepted medical use. Substances listed in Schedule III include anabolic steroids, codeine, and derivatives of barbituric acid. Schedule IV and Schedule V substances have a low potential for abuse, compared to substances in Schedules I, II, and III, and currently have accepted medical use. Substances in Schedule IV include phenobarbital, librium, and valium. Substances in Schedule V include certain stimulants and narcotic compounds.

Methamphetamine is a Schedule II controlled substance under Florida law, s. 893.03(2)(c)4., F.S., and federal law, s. 21 U.S.C. § 812. Methamphetamine is a highly addictive nerve stimulant found in virtually every metropolitan area of the country, according to the U.S. Drug Enforcement Agency (DEA). Commonly called “speed,” “crank,” “crystal,” or “zip,” methamphetamine can be smoked, injected, snorted, or taken orally. It produces an initial “high,” lasting between 15 and 30 minutes, that is difficult if not impossible for the user to repeat, leading the user to ingest more and more of the drug and go on longer binges. Methamphetamine’s psychological side-effects include paranoia, hallucinations and delusions of insects or parasites crawling under the skin. Long-time use results in a decline in physical health, as well. In the United States, methamphetamines are either imported by drug traffickers or manufactured in small “clandestine” laboratories (usually household kitchens) using recipes involving commonly available chemicals derived from cold medicines, drain cleaners, over-the-counter diet pills, battery acid, and matches.

According to a December 15, 2003, news release posted on the Florida Department of Law Enforcement website, Florida ranked sixth nationwide last year for methamphetamine seizures. In 2002, law enforcement officers seized 127 clandestine methamphetamine labs, compared to 229 seizures in 2003. The rapidity of the spread of clandestine labs in Florida is reflected in the DEA statistics that prior to 1999, only seven labs had been seized in Florida.

Anhydrous ammonia and ephedrine are listed as precursor chemicals under Florida law. It is unlawful under federal law to steal anhydrous ammonia or transport stolen anhydrous ammonia across state lines, if the person committing the theft or transport knows, intends, or has

reasonable cause to believe that the anhydrous ammonia will be used to manufacture a controlled substance. (21 U.S.C. § 864)

Section 893.033(1), F.S., defines “listed precursor chemical” as a chemical that may be used in manufacturing a controlled substance in violation of ch. 893, F.S., and is critical to the creation of the controlled substance. Section 893.033(2), F.S., defines “listed essential chemical” as a chemical that may be used as a solvent, reagent, or catalyst in manufacturing a controlled substance in violation of ch. 893, F.S.

Anhydrous ammonia is a necessary component to the “reactant metal” method or “Nazi” method of methamphetamine production. Currently, there are 26 chemicals or substances listed or designated in s. 893.033(1), F.S., as listed precursor chemicals, some of which are used or found in the manufacture of methamphetamines, such as ephedrine, pseudoephedrine, benzyl chloride, benzyl cyanide, chloroephedrine, chloropseudoephedrine, methylamine, and phenylacetic acid. There are scores of chemicals used in the production of methamphetamine; their appearance depends upon the production method used. Some listed precursor chemicals have legitimate uses. For example, methylamine is used in tanning and the manufacture of dyestuffs; benzyl chloride is used in the manufacture of perfumes, pharmaceuticals, dyes, tannins, and artificial resins; ephedrine is used as an anti-asthmatic drug; and pseudoephedrine is used as a decongestant.

Department of Health

In carrying out its public health mission, DOH may identify, assess, and control the presence and spread of communicable diseases; monitor and regulate factors in the environment which may impair the public’s health; and ensure the availability of and access to preventative and primary health care, including acute and episodic care, prenatal and postpartum care, child health, family planning, school health, chronic disease prevention, child and adult immunization, dental health, nutrition, and health education and promotion services. The department also implements a public health system that includes state laboratory and pharmacy services, the state vital statistics system, emergency medical services coordination and support, and recruitment, retention, and development of preventive and primary health care professionals and managers.

The department provides public health services through 67 county health departments in partnership with county governments, as specified in part I, of ch. 154, F.S. The department has the duty: to assess the public health status and needs of the state through statewide data collection and other appropriate means; formulate general powers affecting the public health of the state; administer and enforce laws and rules relating to sanitation, control of communicable diseases, illnesses, injuries, and hazards to health among humans and from animals to humans, and the general health of the people of the state; cooperate with and accept assistance from federal, state, and local officials for prevention and suppression of communicable and other diseases, illnesses, injuries, and hazards to human health; and declare, enforce, modify, and abolish quarantine of persons, animals, and premises as the circumstances indicate for controlling communicable diseases or providing protection from unsafe conditions that pose a threat to public health, except as provided for the control of sexually transmissible disease under s. 384.28, F.S., and ss. 392.545-392.60, F.S., for the control of tuberculosis.¹

¹ s. 381.0011, F.S.

The department must adopt rules to specify the conditions and procedures for imposing and releasing a quarantine. The rules must include provisions related to: the closure of premises; the movement of persons or animals exposed to or infected with a communicable disease; the tests or prophylactic treatment for communicable disease required before employment or admission to the premises; testing or destruction of animals with or suspected of having a disease transmissible to humans; access by the department to quarantined premises; and the disinfection of quarantined animals, persons, or premises. In conjunction with its authority to quarantine, any health regulation that restricts travel or trade within the state may not be adopted or enforced in the state except by authority of the department.²

The department may: provide for a thorough investigation and study of the incidence, causes, modes of propagation and transmission, and means of prevention, control, and cure of diseases, illnesses, and hazards to human health; provide for the dissemination of information to the public to prevent, control, and cure diseases, illnesses, and hazards to human health; cooperate with and assist federal health officials in enforcing public health laws and regulations; and other duties specified in law.

Pursuant to s. 381.0012, F.S., the department may commence and maintain all proper and necessary actions and proceedings to enforce the rules adopted under ch. 381, F.S., and may defend all proceedings involving the department's powers and duties. The department may apply for injunctions and commence and maintain all proper and necessary actions and proceedings to compel the performance of any act specifically required of any person, officer, or board by any law of this state relating to public health.³ The department may request a magistrate to issue a warrant in criminal cases and the magistrate must issue a warrant directed to any sheriff, deputy, or police officer to assist in any way to carry out the purpose and intent of ch. 381, F.S. Every state and county attorney, sheriff, police officer, and other appropriate city and county officials has a duty, upon request, to assist the department or any of its agents in enforcing the state health laws and the rules adopted under ch. 381, F.S.⁴

The rules adopted by the department under ch. 381, F.S., shall, as to matters of public health, supersede all rules enacted by other state departments, boards, commissions, or ordinances and regulations enacted by municipalities, with specified exceptions.⁵ The authority, action, and proceedings of the department in enforcing the rules under ch. 381, F.S., shall be regarded as judicial in nature and treated as prima facie just and legal.⁶ Any person who violates ch. 381, F.S., any quarantine, or any rule; or who interferes with, hinders, or opposes any employee of the department in the discharge of his or her duties; or who maliciously disseminates any false rumor or report concerning the existence of any infectious or contagious disease is liable for a second degree misdemeanor punishable by jail up to 60 days and the imposition of a fine up to \$500.

² s. 381.0011, F.S.

³ s. 381.0012(3) and (4), F.S.

⁴ s. 381.0012(5), F.S.

⁵ s. 381.0014, F.S.

⁶ s. 381.0015, F.S.

Whenever the department finds it necessary to acquire private property for the use of DOH and to be occupied by the department, the department may exercise the power of eminent domain and to proceed to condemn the property in the manner provided by ch. 73, F.S.

III. Effect of Proposed Changes:

Section 1. Amends s. 893.02, F.S., relating to controlled substances, to provide definitions for “clandestine laboratory,” “contaminated” or “contamination,” “contamination assessment specialist” or “contamination assessor,” “decontamination,” “decontamination specialist,” and “residential property.”

- “Clandestine laboratory” is defined to mean any location and proximate areas set aside or used that are likely to be contaminated as a result of manufacturing, processing, cooking, disposing of, or storing, either temporarily or permanently, any substances regulated under ch. 893, F.S., except as such activities are authorized in ch. 499, F.S.
- “Contaminated” or “contamination” means containing levels of chemicals at or above the levels defined by DOH pursuant to s. 893.123(1), F.S., as a result of clandestine laboratory activity. Section 893.123(1), F.S., as created in this bill, requires DOH to adopt rules establishing standards for cleanup and testing of clandestine laboratories.
- “Contamination assessment specialist” or “contamination assessor” means a person responsible for assessing the extent of contamination and decontamination by determining the indoor air quality in a residential property based on the standards defined by DOH. Upon the conclusion of a decontamination, a residential property must successfully test less than or equal to the values defined by DOH. The assessor must have specialized training that provides him or her with knowledge, skills, and abilities to use quantitative measurement techniques in collecting and assessing specified contamination levels that have the ability to impair human health and well-being.
- “Decontamination” means the process of reducing the levels of contaminants to the levels defined by DOH under s. 893.123(1), F.S., that allow human reoccupancy using currently available methods and processes.
- “Decontamination specialist” means a person responsible for the cleanup, treatment, repair, removal, and decontamination of contaminated materials located in a residential property where clandestine laboratory activities occurred. The person must have knowledge, skills, and ability to prescribe methods to eliminate, control, or reduce contamination; and must have been trained in the removal, storage, transport, and disposal of hazardous chemicals or chemical residues commonly associated with clandestine laboratory activities.
- “Residential property” means a dwelling unit used, or intended for use, by an individual or individuals as a permanent residence. The term includes improved real property of between one and four dwellings; a condominium unit; a cooperative unit; or a mobile home or manufactured home. The term excludes a hotel, motel, campground, marina, or timeshare unit.

Section 2. Creates s. 893.121, F.S., to specify requirements for the quarantine of property.

Subsection (1) states that the purpose of the quarantine is to prevent the exposure of any person to the hazards associated with clandestine laboratory activities and provide protections from

unsafe conditions that pose a threat to public health, safety, and welfare. The subsection specifies that DOH has authority to quarantine residential property under s. 381.0011, F.S.

Subsection (2) provides that whenever a sheriff, police officer, or other law enforcement entity secures evidence from a residential property in which illegal clandestine laboratory activities have occurred, DOH must quarantine the property. The local law enforcement entity securing evidence must enforce a quarantine on the residential property as part of its duty to assist DOH under s. 381.0012(5), F.S. Enforcement does not require the 24-hour posting of law enforcement personnel. The residential property must remain quarantined until DOH receives a certificate of fitness documenting that the property was decontaminated as defined by DOH pursuant to s. 893.123, F.S., or demolished in accordance with s. 893.122(1), F.S., or a court order is presented requiring the quarantine to be lifted.

Subsection (3) requires the department to adopt rules to establish a uniform notice to post at the site of a quarantined clandestine laboratory and a uniform letter of notification of the quarantine to be sent to the residential owner or manager. It is the responsibility of local law enforcement to post the notice of a quarantine on the residential property, and it is the responsibility of DOH to mail the letter of notification. The material in the letter and notice must include, but not be limited to:

- That the property has been quarantined and a clandestine laboratory was seized on or inside the property;
- The date of the quarantine;
- The name and contact telephone number of the law enforcement entity posting the quarantine;
- A statement specifying that hazardous substances, toxic chemicals, or other hazardous waste products may have been present and may remain on or inside the property and that exposure to the substances may be harmful and may pose a threat to the public health and the environment;
- A statement that it is unlawful for an unauthorized person to enter the contaminated property and that the removal of any signs of the quarantine is a second degree misdemeanor for violation of s. 381.0025(1), F.S., which is punishable by sentencing of jail time up to 6 months and the imposition of a fine of up to \$500; and
- A statement explaining how to have the quarantine lifted.

Subsection (4) requires the local law enforcement entity to immediately notify the local health officer and the department's Division of Environmental Health, upon securing evidence from a residential property in which illegal clandestine laboratory activities occurred, that a residential property is quarantined and to provide the name and contact information of the law enforcement entity, the name of the residential property owner or residential property manager, and the address of the property.

Subsection (5) requires DOH, to the extent possible, to mail the letter of notification to the residential property owner or the manager of the residential property within 5 working days from the date of quarantine notifying the owner or manager that a clandestine laboratory was found on the property and that the property has been quarantined. The department must also include a list

of contamination assessment specialists and decontamination specialists and any other information deemed appropriate by DOH to the residential property owner or manager.

Subsection (6) provides that any person who has an interest in a residential property that is quarantined under this section may file a petition to the circuit court in which the residential property is located to request that the quarantine of the residential property be lifted for one of the following reasons:

- The residential property was wrongfully quarantined; or
- The residential property has been properly decontaminated as defined by DOH pursuant to s. 893.123, F.S., or demolished pursuant to s. 893.122(1), F.S., and may be reoccupied for habitation, but DOH refuses or fails to lift the quarantine.

Subsection (7) specifies that a person may not inhabit the quarantined residential property, offer the property to the public for temporary or indefinite habitation, or remove any notice of the quarantine. Any person who *willfully* violates this subsection commits a second degree misdemeanor which is punishable by sentencing of jail time up to 6 months and the imposition of a fine of up to \$500.

Section 3. Creates s. 893.122, F.S., to require that, upon notification from DOH that clandestine laboratory activities have occurred in a residential property owned by that owner and that the property is quarantined, the owner of such residential property meet the clandestine laboratory decontamination standards in compliance with s. 893.123, F.S., unless the property owner, at the owner's discretion, elects to demolish the contaminated property. The demolition and removal of materials must meet the requirements of the Occupational Safety and Health Administration and the United States Environmental Protection Agency regulations pertaining to the generation, storage, transport, and disposal of hazardous wastes and any state or local requirements.

A residential property owner who has met the standards for clandestine laboratory decontamination, as evidenced by a certificate of fitness and a letter of reoccupancy pursuant to s. 893.123, F.S., as created in this bill, or has demolished the residential property in compliance with this section, shall have immunity from health-based civil actions brought by any future owner, renter, or other person who occupies such residential property, or a neighbor of such residential property, in which the alleged cause of the injury or loss is the existence of the clandestine laboratory. The immunity does not extend to any person who has been convicted for the manufacture of any substance regulated under ch. 893, F.S., on the property where clandestine laboratory activities occurred.

Section 4. Creates s. 893.123, F.S., to require DOH to adopt rules that establish:

- Standards for indoor air quality regarding levels of contaminants produced by clandestine laboratory activities to include methamphetamine, lead, mercury, and volatile organic compounds, and such standards must be consistent with values commonly used by other states or comply with national standards;
- Standards for the cleanup and testing of clandestine laboratories; and
- A certificate of fitness that must act as appropriate documentation that a residential property has been decontaminated in accordance with specified standards.

The certificate of fitness must be submitted to DOH by a contamination assessment specialist. The certificate of fitness must include, but is not limited to: the name of the residential property owner, and if applicable the parcel identification of the residential property; the dates the residential property was quarantined and cleanup was completed; a summary of the indoor air quality test results, findings, and conclusions as determined by a contamination assessment specialist; the name and address of the contamination assessment specialist and the decontamination specialist; the method of repair, replacement, or decontamination of the residential property; and a letter of reoccupancy that will notify the residential property owner that the property may be reoccupied for habitation.

When DOH receives the certificate of fitness, it must send a letter of reoccupancy to the residential property owner or manager and to the local law enforcement entity that enforced the quarantine and posted the notice. The letter of reoccupancy must include the address of the residential property, a statement that the quarantine is lifted, and a statement that the residential property may be reoccupied for habitation. If the property is demolished, DOH must lift the quarantine on a residential property when it receives a letter from a demolition company stating that the quarantined property was demolished. The letter must include the address of the residential property and a statement that the demolition was performed in accordance with s. 893.122(1), F.S.

Section 5. Creates s. 893.124, F.S., to require DOH to compile, maintain and post on the department's website, a list of decontamination and contamination assessment specialists and indicate whether the specialists are bonded and insured. The department must adopt rules to specify requirements for persons authorized to perform decontamination and contamination assessments. Decontamination specialists must be responsible for ensuring that all hazardous substances, toxic chemicals, or other hazardous waste products that may be present are removed from the residential property and disposed of in accordance with applicable law. The decontamination or contamination assessment specialist may request copies of any available law enforcement reports or information relating to the following:

- The length of time the property was used as a clandestine laboratory;
- The extent to which the property was exposed to chemicals used in clandestine laboratory activities;
- The chemical process that was involved in the clandestine laboratory activities;
- The chemicals that were removed from the property; and
- The location of the clandestine laboratory activities in relation to habitable areas of the property.

If the contamination assessment specialist determines that the property is not contaminated, the specialist must prepare a certificate of fitness and submit it to DOH.

Section 6. Amends s. 465.016, F.S., to correct a cross-reference.

Section 7. Amends s. 465.023, F.S., to correct a cross-reference.

Section 8. Amends s. 856.015 F.S., to correct a cross-reference.

Section 9. Amends s. 893.135 F.S., to correct a cross-reference.

Section 10. Amends s. 944.47 F.S., to correct a cross-reference.

Section 11. Amends s. 951.22 F.S., to correct a cross-reference.

Section 12. Amends s. 985.4046, F.S., to correct a cross-reference.

Section 13. Provides an effective date of July 1, 2006

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

D. Other Constitutional Issues:

Nondelegation Doctrine

It is unclear what standards and procedures DOH will establish by rule for establishing standards for the cleanup and testing of clandestine laboratories, and the requirements for persons authorized to perform clandestine laboratory cleanup. To the extent that the bill does not provide sufficient guidelines to DOH, it raises the question of whether the bill provides adequate limitations and safeguards so that the Legislature's delegation to DOH is not a violation of Section 3, Article II of the Florida Constitution. The bill provides for property where clandestine laboratory activities have occurred to automatically *be subject to quarantine whenever a sheriff, police officer, or other law enforcement entity secures evidence from a residential property in which illegal clandestine laboratory activities occurred.* Such delegation to DOH to establish the standards for the cleanup and testing of clandestine laboratories and requirements for persons authorized to perform clandestine laboratory cleanup does not appear to expressly provide a sufficient limitation on DOH's authority. The department would be authorized to substitute its judgment for that of the Legislature.

Under the nondelegation doctrine, the Florida Supreme Court struck down a former section of law respecting the power of the Board of Psychological Examiners to grant certificates with the title “psychologist” and to determine the qualifications of applicants as unconstitutional in that it failed sufficiently to fix the standards to be applied and in effect delegated the application of the statute without sufficient limitations on the board’s discretion.⁷

Section 3, Article II of the Florida Constitution provides that the powers of the state government shall be divided into legislative, executive, and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein. The Florida Supreme Court recently reiterated the requirements of the nondelegation doctrine:

[U]nder article II, section 3 of the constitution the Legislature ‘may not delegate the power to enact a law or the right to exercise unrestricted discretion in applying the law.’⁸ This prohibition, known as the nondelegation doctrine, requires that ‘fundamental and primary policy decisions . . . be made by members of the [L]egislature who are elected to perform those tasks, and [that the] administration of legislative programs must be pursuant to some minimal standards and guidelines ascertainable by reference to the enactment establishing the program.’⁹

The Florida Supreme Court has acknowledged that “[w]here the Legislature makes the fundamental policy decision and delegates to some other body the task of implementing that policy under adequate safeguards, there is no violation of the [Delegation of Powers] doctrine.”¹⁰ “In other words, statutes granting power to the executive branch ‘must clearly announce adequate standards to guide . . . in the execution of the powers delegated. The statute must so clearly define the power delegated that the [executive branch] is precluded from acting from whim, showing favoritism, or exercising unbridled discretion.’”¹¹

Access to Courts

The bill’s extension of immunity to certain property owners from health-based civil actions brought by any future owner, renter, or other person who occupies such property, or a neighbor of such property, in which the alleged cause of the injury or loss is the existence of the clandestine laboratory raises questions about possible infringements on the right of access to the courts. Section 21, Art I of the State Constitution provides that the courts shall be open to all for redress for an injury. To impose a barrier or limitation on litigants right to file certain actions it would have to meet the test announced by the

⁷ See *Husband v. Cassel*, 130 So.2d 69 (1961).

⁸ See *Bush v. Schiavo*, 885 So.2d 321 at 331 citing *Sims v. State*, 754 So.2d 657, 668 (Fla.2000).

⁹ See *Bush v. Schiavo*, 885 So.2d 321 at 331 citing *Askew v. Cross Key Waterways*, 372 So.2d 913, 925 (Fla.1978).

¹⁰ See *Askew v. Cross Key Waterways*, 372 So.2d 913 at 921. (Fla.1978).

¹¹ See *Bush v. Schiavo*, 885 So.2d 321 at 331 citing *Lewis v. Bank of Pasco County*, 346 So.2d 53, 55-56 (Fla.1976).

Florida Supreme Court in *Kluger v. White*¹². Under the constitutional test established by the Florida Supreme Court in *Kluger v. White*, the Legislature would have to: (1) provide a reasonable alternative remedy or commensurate benefit, or (2) make a legislative showing of overpowering public necessity for the abolishment of the right and no alternative method of meeting such public necessity.

Taking of Private Property

Article X, s. 6 of the State Constitution provides that no private property shall be taken except for a public purpose and with full compensation therefore paid to each owner or secured by deposit in the registry of the court and available to the owner. Provision may be made by law for the taking of easements, by like proceedings, for the drainage of the land of one person over or through the land of another.

A takings issue is implicated in the bill to the extent the bill authorizes a law enforcement agency to quarantine the property and subsequent to the quarantine notify DOH, with the authority to quarantine that property has been quarantined. The authority to quarantine under the bill rests with DOH. The residential property owner may not have access to his or her property until he or she proves in a court that the property is not contaminated or has been demolished according to standards established by DOH *by rule*, not statute. The quarantine of property under to this bill may arguably be considered a taking. Although the state may validly exercise its police power in conformance with applicable statutes and rules when it destroys property, its exercise of the police powers can still result in a taking.¹³ Full and just compensation is required when the state, pursuant to its police power, destroys healthy but suspect citrus trees to prevent the spread of citrus canker.¹⁴ There is no settled formula for determining when the valid exercise of police power stops and an impermissible encroachment on private property rights begins, but some of the factors which have been considered are:¹⁵

- Whether there is a physical invasion of the property;
- The degree to which there is a diminution in value of the property or whether the regulation precludes all economically reasonable use of the property;
- Whether the regulation confers a public benefit or prevents a public harm;
- Whether the regulation promotes the health, safety, welfare, or morals of the public;
- Whether the regulation is arbitrarily and capriciously applied; and
- The extent to which the regulation curtails investment-backed expectations.

Where a regulation creates a public benefit, it is more likely an exercise of eminent domain, and where a public harm is prevented it is more likely an exercise of the police power.¹⁶ Reasonable regulations pursuant to the police power of the state, intended to

¹² See *Kluger v. White*, 281 So.2d 1 (Fla. 1973).

¹³ See *Albrecht v. State*, 444 So.2d 8 (Fla.1984) and *Conner v. Reed Bros., Inc.*, 567 So.2d 515 (Fla. 2nd DCA 1990).

¹⁴ See *Department of Agriculture and Consumer Services v. Mid-Florida Growers, Inc.*, 521 So.2d 101 (Fla. 1988).

¹⁵ See *Graham v. Estuary Properties, Inc.*, 399 So.2d 1374 (Fla 1981).

¹⁶ *Id.*

promote public health, safety, or general public welfare, may be adopted and enforced without violating the constitutional rights of property owners.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The owners of property where clandestine laboratory activities have been found by law enforcement agencies may lose access to the use and enjoyment of their property until the quarantine on that property has been removed. Owners will also incur costs associated with having the property cleaned up of the decontamination and any costs associated with following the procedures required under the bill to have a quarantine removed. Residential property owners whose property is subject to quarantine under the bill may lose personal property because, although the bill makes it a criminal offense to enter quarantined residential property, it does not provide for law enforcement agencies to actively enforce the quarantine with a 24-hour posting of law enforcement personnel.

C. Government Sector Impact:

The Department of Health will incur costs to implement the bill. An analysis of the bill was requested by staff, and an analysis was not provided by the department.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill establishes the requirements for a quarantine of property where clandestine laboratory activities have occurred by law enforcement officials under the authority and power delegated by the Legislature to DOH to establish a quarantine but fails to involve DOH in the declaration of a quarantine. Under the bill DOH is notified after the property has been quarantined.

The bill does not impose *any timeframe* for the decontamination specialists to complete their work on making a determination on whether quarantined property is contaminated from clandestine laboratory activities.

The Florida Legislature has established a state-funded program to clean up properties that are contaminated as a result of the operations of a dry-cleaning facility or wholesale supply facility.¹⁷ The bill authorizes the quarantine of residential property where illegal clandestine laboratory activities have occurred but does not provide any government assistance to individual

¹⁷ See s. 376.3078, F.S.

property owners who were not involved in the illegal activity and who may not be able to afford the cleanup of the contamination caused by such activities in their residential property.

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

VIII. Summary of Amendments:

None.

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