

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: Criminal Justice Committee

BILL: CS/SB 270

INTRODUCER: Criminal Justice Committee and Senator Lynn

SUBJECT: Remediation of Health Risks for Buildings Where Contraband Has Been Manufactured Illegally

DATE: April 17, 2007

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Munroe</u>	<u>Wilson</u>	<u>HP</u>	<u>Favorable</u>
2.	<u>Herrin</u>	<u>Yeatman</u>	<u>CA</u>	<u>Favorable</u>
3.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill creates a thirteen-member Task Force for the Remediation of Illicit Drug Labs within the Executive Office of the Governor for the purpose of recommending strategies and actions for reducing or eliminating health risks from buildings in Florida where methamphetamine or other contraband has been illegally manufactured. The bill specifies the membership, duties of the task force, staffing, location of meetings, public access to meetings and records, and reimbursement for per diem and travel expenses.

The task force must submit a preliminary draft report of its findings and recommendations at least 90 days before the first day of the 2008 Regular Session of the Legislature. The task force's final report must be filed with the Governor, the President of the Senate, and the Speaker of the House of Representatives at least 30 days before the first day of the 2008 Regular Session. The final report must include a draft of any proposed rules and proposed legislation, which are relevant for any recommendations of the task force.

The bill also creates a nine-member Drug Paraphernalia Abatement Task Force within the Executive Office of the Governor for the purpose of recommending strategies for reducing the availability and use of drug paraphernalia. The bill specifies the membership, duties of the task force, staffing, location of meetings, public access to meetings and records, and reimbursement for per diem and travel expenses.

The task force must submit a preliminary draft report of its findings and recommendations at least 45 days before the first day of the 2008 Regular Session of the Legislature. The task force's final report must be filed with the Governor, the President of the Senate, and the Speaker of the

House of Representatives at least 30 days before the first day of the 2008 Regular Session. The final report must include a draft of proposed rules and proposed legislation for any recommendations requiring proposed rules and proposed legislation.

This bill creates two undesignated sections of Florida law.

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). In the United States, methamphetamine is 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 for methamphetamine seizures. In 2002, law enforcement officers seized 127 clandestine methamphetamine labs, compared to 229 seizures in 2003. The rapid spread of clandestine labs in Florida is reflected in the DEA statistics that indicate that, prior to 1999, only seven labs had been seized in Florida.

Health Hazards from Clandestine Laboratories

All of the processes that produce methamphetamine use a variety of chemicals, including explosives, solvents, metals, salts, and corrosives. During the drug manufacturing process, additional compounds and by-products are produced. Exposure to these chemicals can have various health effects on producers and others that are unintentionally exposed. The potential health effects from long-term exposure to low levels of the chemicals used and produced in the clandestine laboratories remains under study.

Typically, after a laboratory is discovered by law enforcement officials, the bulk of lab-related materials including chemicals and containers are removed. However, small amounts of contaminants can remain on floors, walls, counters, carpets, furniture, sinks, drains and ventilation systems. Exposure to even small amounts of some of these chemicals can pose

serious health risks. In addition to concerns for peace officer safety and health, there is increasing concern about potential health impacts on the public and on unknowing inhabitants, including children and the elderly, who subsequently occupy dwellings where illegal drug labs have been located.

Every pound of methamphetamine produced generates five or more pounds of hazardous waste. Much of this waste is dumped down drains and toilets or on the ground, creating many additional contaminated sites. Such dumping has created septic tanks full of dangerous waste and chemically contaminated drain fields, soils, and surface waters.

Drug Paraphernalia

With the rise of the drug culture in the U.S. in the 1960s and 1970s, the country began to see the appearance of “head shops,” which were stores that sold a wide range of drug paraphernalia. These items were also sold openly in the street until anti-paraphernalia laws in the 1980s eventually ended such sales.¹

Today law enforcement faces another challenge. With the advent of the Internet, criminals have greatly expanded their illicit sales to a worldwide market for drug paraphernalia.²

Section 893.145, F.S., defines “drug paraphernalia” as all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, transporting, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of ch. 893, F.S., or s. 877.111, F.S.

These items include, but are not limited to, the following:³

- A kit used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing a controlled substance;
- A scale and balance used, intended for use, or designed for use in weighing or measuring a controlled substance;
- A bong;
- A pipe;
- A blender, bowl, container, spoon, and mixing device used, intended for use, or designed for use in compounding a controlled substance;
- A water pipe;
- A balloon; and
- Duct tape.

Drug paraphernalia may be ordinary items or items disguised to resemble ordinary items. This can make the identification of drug paraphernalia a challenge. Section 893.146, F.S., provides

¹ U.S. Drug Enforcement Administration, Drug Paraphernalia, Tools of the Illegal Drug Trade. <http://www.usdoj.gov/dea/concern/paraphernaliafact.html> (Last visited March 22, 2007).

² *Id.*

³ Section 893.145(12), F.S.

that, in determining whether an object is drug paraphernalia, a court or other authority or jury must consider, in addition to all other logically relevant factors, the following factors:

- Statements by an owner or by anyone in control of the object concerning its use;
- The proximity of the object, in time and space, to a direct violation of this act;
- The proximity of the object to controlled substances;
- The existence of any residue of controlled substances on the object;
- Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons who he or she knows, or should reasonably know, intend to use the object to facilitate a violation of this act. The innocence of an owner, or of anyone in control of the object, as to a direct violation of this act shall not prevent a finding that the object is intended for use, or designed for use, as drug paraphernalia;
- Instructions, oral or written, provided with the object concerning its use;
- Descriptive materials accompanying the object which explain or depict its use;
- Any advertising concerning its use;
- The manner in which the object is displayed for sale;
- Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor of, or dealer in, tobacco products;
- Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise;
- The existence and scope of legitimate uses for the object in the community; and
- Expert testimony concerning its use.

Drug paraphernalia related offenses include:

- Use or possession of drug paraphernalia – First degree misdemeanor.⁴
- Manufacture or delivery of drug paraphernalia – Third degree felony.⁵
- Delivery of drug paraphernalia to a minor – Second degree felony.⁶
- Delivery of hypodermic syringes and needles to a minor unless dispensed lawfully by a licensed practitioner, parent, legal guardian, or pharmacist – First degree misdemeanor.⁷
- Transportation of drug paraphernalia – Third degree felony.⁸
- Advertisement of drug paraphernalia – First degree misdemeanor.⁹

III. Effect of Proposed Changes:

Task Force for the Remediation of Illicit Drug Labs

The bill creates a thirteen-member Task Force for the Remediation of Illicit Drug Labs (task force) in the Executive Office of the Governor for the purpose of recommending strategies and actions for reducing or eliminating health risks from buildings in Florida where

⁴ Section 893.147(1), F.S.

⁵ Section 893.147(2), F.S.

⁶ Section 893.147(3)(a), F.S.

⁷ Section 893.147(3)(b), F.S.

⁸ Section 893.147(4), F.S.

⁹ Section 893.147(5), F.S.

methamphetamine or other contraband has been illegally manufactured. The task force membership includes: the director of the Office of Drug Control within the Executive Office of the Governor, who will serve as chairperson of the task force; the executive director of the Department of Law Enforcement or his or her designee; the Secretary of Health or his or her designee; the Secretary of Environmental Protection or his or her designee; the Secretary of Community Affairs or his or her designee; a member of the Florida Senate, appointed by the President of the Senate; and a member of the House of Representatives, appointed by the Speaker of the House of Representatives. In addition, the Governor must appoint the following task force members by July 1, 2007: a state attorney or his or her designee; a representative of the Florida League of Cities; a representative of the Florida Association of Counties; a sheriff or his or her designee; a police chief or his or her designee; and a representative of the Florida Association of Realtors.

The Governor's appointees must be representative of the geographic regions and ethnic and gender diversity of Florida. The task force must hold its first meeting by August 1, 2007. All recommendations of the task force must be by majority vote and seven members constitute a quorum. The task force must meet at the call of the chairperson and must conduct at least three public meetings in Florida. Members of the task force serve without compensation but are entitled to reimbursement for per diem and travel expenses under s. 112.061, F.S. Staff support for the task force must be provided within existing appropriations from the Office of Drug Control, the Department of Law Enforcement, the Department of Health, the Department of Community Affairs, and the Department of Environmental Protection.

The task force must study, take testimony, and develop findings and recommendations regarding the remediation of health risks from buildings in Florida where contraband drugs are illegally manufactured, including: the nature and extent of such remediation; the standards, training and funding that are relevant to such remediation; the responsibility for such remediation; current state or local laws governing remediation and possible revisions; current federal laws or the laws of other states which are relevant to remediation, including the effectiveness of those laws; and any other subject that is relevant to reducing or eliminating the health risks from buildings in Florida where methamphetamine or other contraband has been illegally manufactured.

The task force must submit a preliminary draft report of its findings and recommendations at least 90 days before the first day of the 2008 Regular Session of the Legislature. The task force's final report must be filed with the Governor, the President of the Senate, and the Speaker of the House of Representatives at least 30 days before the first day of the 2008 Regular Session. The final report must include a draft of any proposed rules and proposed legislation, which are relevant for any recommendations of the task force.

Drug Paraphernalia Abatement Task Force

The bill creates a nine-member Drug Paraphernalia Abatement Task Force within the Executive Office of the Governor. The task force is to recommend strategies and actions for lessening access to and the use of drug paraphernalia. The task force includes six members appointed by the Governor. These members must be representatives of the geographic regions and ethnic and gender diversity of this state and must include a representative of a corporation that is licensed to do business in this state and that sells any of the items described in s. 893.145, F.S.; a local law enforcement official or officer; a member of a faith-based community; a superintendent of a

school district or a principal of a secondary school; a member of a community organization concerned about issues relating to illicit activities involving controlled substances; and a former or recovering drug addict. Other members include the Secretary of Business and Professional Regulation or his or her designee, the Secretary of the Department of Health or his or her designee and the director of the Office of Drug Control within the Executive Office of the Governor.

Members of the task force will serve without compensation, but are entitled to reimbursement for per diem and travel expenses in accordance with s. 112.061, F.S. The task force is staffed by the Office of Drug Control within existing appropriations. The task force is abolished July 1, 2008.

The first meeting of the task force must be held by July 15, 2007, at which time the members must select by majority vote a chairperson from among the task force members. All recommendations of the task force are by majority vote. The task force meets at the call of the chairperson as approved by the Governor and must conduct at least three public meetings in locations throughout the state which have a significant urban business district or which have experienced problems with illicit controlled substance activity resulting, in part, from access to and the use of drug paraphernalia.

Meetings of the task force are open to the public and are subject to the requirements of ch. 286, F.S. Records of the task force are public records and subject to the requirements of ch. 119, F.S., except to the extent that public access to any of those records may be restricted pursuant to that chapter.

The task force is required to study and take testimony regarding: the problem of access to and the use of drug paraphernalia in Florida; businesses that sell items that may be used as drug paraphernalia; current laws and rules and current efforts by regulatory agencies and law enforcement agencies to limit access to and the use of drug paraphernalia, including whether new or amended laws and rules are needed; and approaches to limit access to and the use of drug paraphernalia.

The task force must submit a preliminary draft report of its findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives at least 45 days before the first day of the 2008 Regular Session of the Legislature and must submit its final report 15 days later. In addition to findings and recommendations, the report must include any proposed legislation or rules necessary to implement recommendations.

Effective Date

The bill takes effect upon becoming a law.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

A private sector impact may arise from implementation of recommendations of each task force. For example, to the extent recommendations of the drug paraphernalia task force reduce drug paraphernalia, there may be a reduction in the commission of some drug offenses resulting in a positive fiscal impact.

C. Government Sector Impact:

This bill provides that members of each task force serve without salary but are entitled to reimbursement for travel and per diem expenses in accordance with s. 112.061, F.S. Members of each task force will be required to conduct at least three public meetings in different locations throughout the state and thus will incur travel and per diem costs. The bill does not specify which entity is responsible for reimbursement of travel and per diem expenses. Such expenses generally are the responsibility of the agency that employs the appointed member. In addition, the bill requires a commitment of staff time from specified state agencies to serve on and support each task force.

At the time this analysis was completed, specific information was only available regarding the impact of the drug paraphernalia task force. The Office of Drug Control within the Executive Office of the Governor will absorb all other costs, including staff support and publication expenses. The Executive Office of the Governor estimates that the provisions of this bill relating to the drug paraphernalia task force will result in a nonrecurring fiscal impact of \$24,500, including:

- Travel (Nine members/three meetings/\$500 per trip) - \$13,500.
- Meeting Noticing - \$1,000.
- Conduct Study - \$10,000.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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.
