

STORAGE NAME: h1571a.leps

DATE: April 16, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
LAW ENFORCEMENT AND PUBLIC SAFETY
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 1571

RELATING TO: Fire Marshal/Explosive Materials

SPONSOR(S): Representative Silver

STATUTE(S) AFFECTED:

COMPANION BILL(S): CS/SB 1990 (s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) LAW ENFORCEMENT AND PUBLIC SAFETY YEAS 7 NAYS 0
- (2) GOVERNMENTAL RULES & REGULATIONS
- (3) GENERAL GOVERNMENT APPROPRIATIONS
- (4)
- (5)

I. SUMMARY:

This bill requires that the State Fire Marshal propose legislation and rules that explosive material be tagged for purposes of detecting and identifying the explosive material, and that the State Fire Marshal submit the proposed legislation to the President of the Senate and the Speaker of the House by January 1, 1998.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

The concept of tagging explosives at the time of manufacture with a material that can survive detonation, be recovered, and provide information to support an investigation, has been studied for years. This concept revolves around three basic ideas:

- The addition of a uniquely configured material to a specific explosives product at the time of explosives manufacture;
- The permanent and unambiguous linking of that unique material to that explosives product - as defined by product description, date and place of manufacture, and all subsequent legal ownership transfer of that product through final disposition - by proper records; and,
- The survival, recoverability and decodability of the material following detonation of the explosives.

The material used to tag an explosive is known as a "taggant," which are small, solid particles, containing specific information in coded form. This information can facilitate the tracing of the explosives used to the point and date of manufacture.

The first and only large scale pilot test which examined the feasibility of using taggants on a large-scale production basis was formally initiated in July of 1977. This test was directed by the Aerospace Corporation under a contract with the United States Department of Treasury and the Bureau of Alcohol, Tobacco and Firearms.

In the pilot test, over six million pounds of otherwise normal cap-sensitive packages explosives were tagged, distributed normally and used normally nationwide, over a period of almost two years. The three largest domestic manufactures of explosives participated. Each of the three manufacturers received and thoroughly tested the taggants, using normal procedures, equipment and standards, and declared the taggants safe. Seventy-nine different explosive products were tagged and distributed to 42 states. No safety-related incidents occurred at any time. Numerous samples of tagged materials were tested for performance, taggant concentration, and post-blast taggant recoverability in a variety of scenarios. All reports were within acceptable limits.

On May 10, 1979, a Maryland man was killed by explosives planted in his truck. Upon investigation of the site, federal investigators found taggants in the debris. These taggants, planted during the pilot test, provided investigators with information relating the specific type of explosive used and when and where the explosive had been manufactured. Record keeping of the sale of the explosive led investigators to the individual responsible for the death of the man and subsequent indictment. In denying the man's appeal, the 4th Circuit Federal Court of Appeals stated that "(T)he use of taggants in explosives rests upon well-established scientific principals." U.S. v. McFillin, 713 F.2d 57, 60 (4th Cir. 1981). The court went on to state that, "(T)he use of taggants rests upon the commonplace scientific principle that small solid particles can be dispersed in a viscous substance, that these particles can be color-coded in a way which survives the explosion, that they can be received and read after detonation, and that statistical measures can allow for contamination and identify the batch of origin. Furthermore, the taggant evidence is corroborated by (government) records which

demonstrate that McFillin purchased explosives from the same batch identified by the taggants.”

The Antiterrorism and Effective Death Penalty Act of 1996 became law April 4, 1996, and requires the Secretary of the Treasury to study the tagging of explosive materials for purposes of detection and identification. This study is required to be completed not more than 12 months after the enactment of this Act and a report must be submitted on the study which contains the results of the study and any recommendations for legislation.

No later than six months after the submission of the report, the Secretary may submit to Congress and publish in the Federal Register draft regulations for the addition of tracer elements to explosive materials manufactured in or imported into the United States, of such character and in such quantity as the Secretary may authorize or require, if the results of the study indicate that the tracer elements: will not pose a risk to human life or safety; will substantially assist law enforcement officers in their investigative efforts; will not substantially impair the quality of the explosive materials for their intended lawful use; will not have a substantially adverse effect on the environment; and the costs associated with the addition of the tracers will not outweigh benefits of their inclusion.

On July 1, 1980, an Act on Explosives for Civil Purposes was adopted into law in Switzerland and required all commercially available explosives manufactured in the country to contain identification taggants. There are currently four domestic explosives manufacturers selling materials tagged to the Swiss specifications. The success rate on resolving bombing incidents in the years 1984-1994, has been 16.2% for untagged explosives and 44.4% for tagged explosives.

B. EFFECT OF PROPOSED CHANGES:

This bill would require the State Fire Marshal to propose legislation, by March 1, 1998, to the President of the Senate and the Speaker of the House of Representatives, recommending to what extent explosive material manufactured or offered for sale in the state be tagged for the purpose of detecting and identifying the explosive material.

In undertaking this task, the State Fire Marshal is required to consult with federal, state and local officials who are experts on the chemicals used to manufacture explosive materials. In addition, the State Fire Marshal must consider the findings and recommendations of the National Research Council's study on the tagging of explosive materials for purposes of detection and identification required by the U.S. Antiterrorism and Effective Death Penalty Act of 1996. Proposed methods for tagging must:

- Substantially assist law enforcement agencies in investigative efforts;
- Least impair the quality of the explosive for its intent use;
- Have the least possible impact on the environment; and,
- Impose the lowest cost of manufacturers and users of explosives.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

Not applicable.

(2) what is the cost of such responsibility at the new level/agency?

Not applicable.

(3) how is the new agency accountable to the people governed?

Not applicable.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

Not applicable.

(2) Who makes the decisions?

Not applicable.

(3) Are private alternatives permitted?

Not applicable.

(4) Are families required to participate in a program?

Not applicable.

(5) Are families penalized for not participating in a program?

Not applicable.

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

Not applicable.

(2) service providers?

Not applicable.

(3) government employees/agencies?

Not applicable.

D. SECTION-BY-SECTION RESEARCH:

Section 1: Directs the State Fire Marshal to consult with experts on the chemicals used in explosive materials to determine the most feasible means of tagging, and propose legislation by January 1, 1998, for submission to the President of the Senate and the Speaker of the House.

Section 2: Provides for an effective date.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

According to a fiscal analysis submitted by the agency, there would be a fiscal impact of \$30,000. Of this amount, \$24,000 would be required for OPS funds and \$6,000 for expenses.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

\$30,000

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

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3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 15, 1997, the Committee on Law Enforcement and Public Safety approved a strike-everything amendment, which adopted the language contained CS/SB 1990, along with a provision for materials that are exempt from any tagging requirements for explosive material, as follows: (1) explosive material legally manufactured on site and used immediately after manufacture, (2) commercially manufactured explosive products, and (3) fertilizer-grade ammonium nitrate. Also, any proposed legislation would be submitted by March 1, 1998.

Also, the Committee approved an amendment to this amendment which indicated that the State Fire Marshal would only recommend legislation *if necessary*.

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VII. SIGNATURES:

COMMITTEE ON LAW ENFORCEMENT AND PUBLIC SAFETY:

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