HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7065 CS PCB HCR 06-03 Clandestine Laboratory Contamination
SPONSOR(S): Health Care Regulation Committee, Garcia
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Health Care Regulation Committee	9 Y, 0 N	Hamrick	Mitchell
1) Criminal Justice Committee	6 Y, 0 N, w/CS	Kramer	Kramer
2) Health Care Appropriations Committee	14 Y, 0 N	Money	Massengale
3) Health & Families Council		Hamrick	Moore
4)			
5)			

SUMMARY ANALYSIS

Families with children have been harmed by unknowingly renting or buying a house that was used as a methamphetamine laboratory because of the absence of decontamination requirements. The bill addresses this issue by providing protections to the public from unsafe conditions that may be found in a house where methamphetamine was manufactured. The residual chemicals and waste products from such production pose a threat to the health, safety, and welfare of the public. Currently, methamphetamine laboratories are seized by the Drug Enforcement Agency and/or the Florida Department of Law Enforcement and all hazardous ingredients and lab equipment are removed from the premises, but nothing is done to decontaminate the property. In Florida, there is no mechanism to determine whether a house (or residential property) was once a clandestine laboratory; no remediation is required to be done on the residential property; and there is no way to notify subsequent occupants of any health risks.

House Bill 7065 CS provides a mechanism intended to prevent a person from unknowingly living in a former illegal clandestine laboratory that has not been decontaminated. The bill provides that a residential property must be quarantined by the Department of Health if the residential property was used as a clandestine laboratory. The bill requires an owner to use a “contamination assessment specialist”, authorized by the department to determine if a home is contaminated and a “decontamination specialist” authorized by the department to perform cleanup, treatment, repair, and removal of contaminated materials. The property will remain quarantined until the department receives documentation that the property was decontaminated or demolished or a court order is presented requiring the quarantine to be lifted. The bill prohibits a person from inhabiting the quarantined property or from offering the property to the public for habitation.

The bill is expected to have an insignificant fiscal impact on the Department of Health. Property owners will be responsible to pay for the testing and cleanup of their own property. Costs will vary depending upon the size of the lab, duration, frequency, and types of chemicals used in the manufacturing process. It is estimated that decontamination costs average $6,500 per 1,200 square feet.

The bill will take effect on July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government—The bill provides a mechanism that will prevent a person from unknowingly living in a former clandestine laboratory that has not been decontaminated. The bill will prohibit a person from inhabiting a property that is quarantined because of contamination.

Promote personal responsibility—The bill may encourage landlords to thoroughly screen potential renters or applicants and encourage them to look for signs of illegal drug activity.

B. EFFECT OF PROPOSED CHANGES:

PRESENT SITUATION

Currently, methamphetamine laboratories are seized by the Drug Enforcement Agency (DEA) and/or the Florida Department of Law Enforcement (FDLE) and all hazardous ingredients and equipment are removed from the premises but nothing is done with the property or remaining contaminated materials. Families with children have been harmed by unknowingly renting or buying a house that was used as a methamphetamine lab because of the absence of decontamination requirements.[1] In 2004, 61 children were found at seized methamphetamine labs in Florida.[2] Currently in Florida, there is no mechanism to determine whether a house (or residential property) was once a clandestine laboratory; no remediation is required to be done on the residential property; and there is no way to notify subsequent occupants of any health risks. Law enforcement and/or special contract vendors simply remove all hazardous chemicals and lab items from a clandestine laboratory.

FEDERAL INITIATIVES

COPS Program Provides Federal Funding to States and Local Governments

In 1998, the Office of Community Oriented Policing Services (COPS) began the Methamphetamine Initiative program that provided $4.5 million to six U.S. cities to implement anti-methamphetamine projects. In 2005, Florida received $832,116 from the COPS program to remove hazardous materials from 388 seized clandestine labs.

Removal and cleanup of hazardous materials seized at clandestine labs must meet the requirements of the Occupational Safety and Health Administration (OSHA), and the Environmental Protection Agency's Resource Conservation and Recovery Act regulations pertaining to the generation, storage, transport, and disposal of hazardous wastes in addition to any state or local requirements.[3] COPS funding does not extend to any level of cleanup relating to decontamination other than removal of remaining hazardous materials and manufacturing equipment.

According to the U.S. Department of Justice, the removal of hazardous materials from a seized clandestine lab is the responsibility of the state or local law enforcement agency that discovers the materials.[4] The state or local law enforcement agency may use the COPS funding to perform the removal themselves using qualified law enforcement or other qualified government personnel, Drug

[1] Jerome, Richard. PEOPLE. "Home Toxic Home?" (August 8, 2005).
[2] Tseng, Nin-Hai. Orlando Sentinel. "Children fall by the wayside in meth-addicted homes." (September 11, 2005).
[3] See 29 CFR Part 1910.120, and Part 1200; 40 CRR Part 260.
[4] US Department of Justice, Office of Community Oriented Policing Services. Methamphetamine Initiative: Final Environmental Assessment. May 13, 2003.

Enforcement Administration hazardous waste management contractors, or other qualified contractors. State and local law enforcement agencies may only use COPS grant funding to pay for hazardous waste removal, transportation, storage, and payment of hazardous waste disposal fees.[5]

COPS Program and El Paso Intelligence Center (EPIC)

To receive COPS funding for handling hazardous lab materials, a DEA Form 612 also called "EPIC form" must be completed and forwarded to the El Paso Intelligence Center, which is the national repository of data concerning clandestine laboratory seizures. The data collected includes the location of the lab, estimated lab capacity, manufacturing process used, lab equipment found on the scene, name of chemist and clean-up personnel, weapons and/or explosives seized, quantity of drugs seized, and precursor agents/catalysts/solvents/reagents seized.[6]

Environmental Protection Agency Funding to State and Local Governments

The Environmental Protection Agency (EPA) makes funding available to state and local governments for the assessment and cleanup of meth lab sites through the Office of Brownfields Cleanup and Redevelopment via grants of up to $200,000 per site.[7] State and local governments may receive grants up to $1 million to be used for the capitalization of revolving loan funds; they may then make loans and sub-grants for the cleanup of methamphetamine lab sites.

FLORIDA INITATIVES

In 2003, the Office of Drug Control, the Florida Department of Law Enforcement, and the federal Drug Enforcement Administration signed a resolution to jointly implement a statewide strategy to deal with clandestine methamphetamine laboratories in Florida. The purpose of the strategy is to combine efforts to combat the manufacturing and distribution of methamphetamines in Florida and improve the overall effectiveness and efficiency of law enforcement's response and investigations.

In 2005, the Florida Department of Children and Families (DCF) established the Northwest Florida Drug Endangered Children Work Group. Subsequently, they published the Northwest Florida Drug Endangered Children Multidisciplinary Protocol to provide law enforcement, DCF, social services, fire and medical services, and prosecutors a basis for the development of community specific procedures handling children where there has been drug production, trafficking, and abuse. DCF is required to remove children from homes in which they have suffered from neglect, abuse, and exposure to toxic and volatile environments.

In 2005, the Legislature passed House Bill 1347 that placed quantity and point of sale restrictions on over-the-counter cold medicines that contain ephedrine, pseudoephedrine or phenylpropanolamine. The bill also increased several penalty provisions and made it a first degree felony to manufacture methamphetamine while a child less than 16 years of age is present.

In 2005, the Florida Office of Drug Control brought together a multi-agency group of experts in handling methamphetamine issues. The workgroup is in the process of creating a single source document called the Florida Statewide Methamphetamine Protocol that will assist federal, state, and local agencies in handling the criminal, environmental, sociological and economic issues that are characteristic of clandestine methamphetamine laboratories.

[5] Ibid.
[6] See DEA Form 612 Instructions (Rev. 04/03)
[7] U.S. Congress. House Committee on Energy and Commerce, Subcommittee on Energy and Hazardous Materials. 2005. "Testimony of Peter Murtha, Director Office of Criminal Enforcement, Forensics and Training Office of Enforcement and Compliance Assurance U.S. Environmental Protection Agency." 109th Congress.

The Attorney General's Office in partnership with the Department of Health, the Department of Children and Families, the Office of Drug Control, the Florida Department of Law Enforcement, and the Drug Enforcement Agency recently unveiled the Florida Alliance for Drug Endangered Children website (www.floridadec.org).

AUTHORITY TO QUARANTINE

Current Statutory Provisions for Quarantines

According to s. 381.0011, F.S., it is the duty of the Department of Health to:

- Administer and enforce laws and rules relating to sanitation, control of communicable diseases, illnesses 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 the prevention and suppression of communicable and other diseases, illnesses, injuries, and hazards to human health.

- 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 in ss. 384.28 and 392.545-392.60, F.S.

Current Statutory Authority for the Enforcement of a Quarantine by Law Enforcement

Section 381.0012(5), F.S., provides that it is the duty of every state and county attorney, sheriff, police officer, and other appropriate city and county officials upon request to assist the department or any of its agents in enforcing the state health laws and the rules adopted in chapter 381, F.S. The department may also 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.

WHAT IS METHAMPHETAMINE?

Methamphetamine is a central nervous system stimulant commonly referred to as "meth." Its street names are numerous and include such terms as crank, speed, ice or crystal.[8] Meth is a derivative of amphetamine that dates back to the early 1900s. The drug became more widely used during World War II and eventually became widely available in tablet form.[9] Meth can be found and used in numerous forms, that is, injected, smoked, inhaled, or taken orally. The 1970 Controlled Substances Act, made the production of injectable meth illegal. According to the Oregon Department of Human Services, methamphetamine is currently the illicit "drug of choice" because of its ease of manufacture, comparatively low cost, 12-hour half-life, and the euphoria, energy, and feelings of power, and sexual arousal that it produces.[10] A key ingredient of methamphetamine production is pseudoephedrine/ephedrine, which is commonly found in cold medicine.

According to a report by the State of North Carolina, clandestine[11] methamphetamine laboratories

[8] US Department of Justice, Office of Community Policing Services. Methamphetamine Fact Sheet. http://www.cops.usdoj.gov/mime/open.pdf?Item=1356 (February 3, 2006).
[9] US Department of Justice, Office of Community Policing Services. An Evaluation of the COPS Office Methamphetamine Initiative. http://www.cops.usdoj.gov/mime/open.pdf?Item=608 (February 3, 2006).
[10] An Epidemiology Publication of the Oregon Department of Human Services. Children in Methamphetamine 'Labs' in Oregon. Vol. 52, No. 16. August 12, 2003.
[11] Clandestine drug laboratories are used in the illicit production of illegal drugs.

account for more than 90 percent of all U.S. illegal drug seizures in recent years.[12] In 2000, the Drug abuse Warning Network, indicated that among club drugs, meth accounted for the largest share of emergency department mentions, and was especially problematic in the metropolitan areas of the western United States. The DEA has estimated that the manufacturing or "cooking" of methamphetamine leaves behind 5 to 7 pounds of chemical waste for each pound of meth that is made.[13]

HEALTH RISKS ASSOCIATED WITH METHAMPHETAMINE MANUFACTURING

Toxic substances from the cooking process can permeate walls, floorboards, and carpeting. The resulting contaminations can last for years without extensive remediation. Homes may be filled with residue from acetone, red phosphorus, and other toxic agents. Waste may consist of corrosives and flammables that have been dumped down sinks, toilets, tubs, and in the environment.

Threat to Children, Medical Concerns and Long-term Effects

According to a program coordinator with the National Jewish Medical and Research Center, a leading researcher on the impact of methamphetamine production, long-term health risks could include damage to the lungs, liver, kidneys, and cancer. Individuals with existing medical conditions and young children are at higher risk.[14]

In Oregon, one-third to one-half of the children found in meth labs have tested positive for methamphetamine, via urinalysis testing, due to accidental ingestion or passive inhalation of the drug.[15] Pediatric patients with methamphetamine poisoning may experience tachycardia, agitation, inconsolable crying, irritability, and vomiting.[16] The most common complication of meth poisoning is rhabdomyolysis, which is the breakdown of muscle fibers that are then released in to the blood and may result in kidney damage.[17]

Reasons there is Limited Data on the Long-term Health Effects

There is limited data available on the long-term health effects caused by exposure to the chemicals used in methamphetamine manufacturing. Knowledge in this area is limited because of the following reasons:[18]

- Clandestine laboratories have only occurred in the last 10 years and their health effects have been studied for an even shorter period of time.
- Restrictions on tracking health records of minor children.
- It is difficult to determine the magnitude of the exposure to children in a home not only during, but after manufacturing has occurred. To date, contamination studies of controlled manufacturing have only occurred in buildings slated for demolition.[19]

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[12] State of North Carolina. Department of Health and Human Services. Illegal Methamphetamine Laboratory Decontamination and Reoccupancy Guidelines. April 2005. http://www.epi.state.mn.us/epi/oii/methguidelines.pdf
[13] Minnesota Department of Health. Lab Cleanup. http://www.health.state.mn.us/divs/eh/meth/lab/labcleanup.html (February 11, 2006).
[14] Jerome, Richard. PEOPLE. "Home Toxic Home?" (August 8, 2005).
[15] An Epidemiology Publication of the Oregon Department of Human Services. Children in Methamphetamine "Labs" in Oregon. Vol. 52, No. 16. August 12, 2003.
[16] Ibid.
[17] Ibid.
[18] U.S. Congress. House Committee on Science. 2005. "Congressional Testimony by John Martyny." 109th Congress. http://www.house.gov/science/hearings/full05/mar3/Martyny.pdf (February 7, 2006).
[19] Researchers have requested federal dollars to conduct long-term research at a secure location such as Los Alamos, New Mexico.

MANUFACTURING OF METHAMPHETAMINE

There are different levels of clandestine laboratories, that is, "superlabs" and "mom and pop" labs. Large-scale production by "superlabs" is predominantly done in Mexico, a major producer or transshipment point for much of the methamphetamine entering America.[20]

The production of methamphetamine is a relatively simple process and can be carried out by individuals without special knowledge or expertise in chemistry. Recipes number in the hundreds and are constantly evolving. There are well over 300 substances that can be used to produce meth. However, there are two primary methods for manufacturing methamphetamine.

Red Phosphorus

The red phosphorous method of manufacturing methamphetamine involves the use of a number of readily obtained materials, including solvents, iodine, hydrogen chloride gas (which can be made by combining sulfuric acid and rock salt), sodium hydroxide, and red phosphorus.[21] Red Phosphorus, for example, can be obtained from match stick heads and flares.

Red Phosphorus labs have the following dangers: phosphine gas production, acid gas generation, acutely corrosive and toxic atmospheres, flammable and explosive atmospheres and oxygen deficient atmospheres. A study[22] on controlled cooks revealed significant exposure to solvents, phosphine,[23] iodine, hydrogen chloride, and methamphetamine aerosol.[24] Because of the spread of methamphetamine during this cooking process, virtually all items within the house as well as all people, pets and toys become contaminated with methamphetamine.[25] Levels of exposure are exceptionally high for children and infants, who because of their developing physiology and their inquisitive oral habits, are exposed to high levels of hazardous chemicals.[26]

Birch Reduction

This method is also referred as the "Nazi" or "Ammonia" method. This method uses lithium metal from batteries and anhydrous ammonia from fertilizer and refrigeration "chillers" in the reduction of ephedrine/pseudoephedrine.

Birch Reduction labs have the following dangers: electroplating sodium metal from sodium hydroxide; sodium hydroxide which may cause skin or lung irritation; a flammability and irritant toxicity hazard from concentrated ammonia atmospheres; the violent reaction of water with sodium or lithium metals; a flammable, explosive atmosphere; an acutely corrosive atmosphere because of the acutely reactive metals used. Phosphine and aerosol iodine are not produced in this method. The levels of anhydrous ammonia produced during these cooks are significantly high. The National Institute of Occupational

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[20] U.S. Congress. House Committee on Government Reform, Subcommittee on Criminal Justice. 2005. "Statement by Scott Burns, Deputy Director for State and Local Affairs, Office of National Drug Control Policy." 109th Congress.
[21] U.S. Congress. House Committee on Science. 2005. "Congressional Testimony by John Martyny." 109th Congress. http://www.house.gov/science/hearings/full05/mar3/Martyny.pdf (February 7, 2006).
[22] The study was conducted by John Martyny, Ph.D., C.I.H., with the Department of Preventative Medicine at the University of Colorado and the National Jewish Medical Research Center in Denver, Colorado.
[23] Phosphine is a gas produced when the solution of iodine, water, ephedrine, and red phosphorous is heated. This is a gas that may cause severe pulmonary irritation resulting in pulmonary edema and death. At lower levels may cause nausea, vomiting, headache, and chest tightness, which are symptoms frequently reported by exposed law enforcement personnel at the time of seizure.
[24] U.S. Congress. House Committee on Science Committee Testimony. 2005. "Congressional Testimony by John Martyny." 109th Congress. http://www.house.gov/science/hearings/full05/mar3/Martyny.pdf (February 7, 2006).
[25] Ibid.
[26] Ibid.

Safety and Health currently recommends that ammonia exposure not exceed 300 parts per million (ppm). However, a meth cook can easily reach 500 ppm of ammonia or more.[27]

Examples of Common Names/Uses for Chemicals in Methamphetamine Laboratories[28]	
Chemical	**Common Name or Product Used**
Acetone	Fingernail polish remover, solvents
Acetic Acid	Vinegar
Alcohol, isopropyl	Rubbing Alcohol
Ammonia (anhydrous)	Fertilizer, used in chillers
Ethyl ether	Computer dust-off
Freon	Refrigerant, propellants
Hydrochloric acid/muriatic acid	Iron ore processing, mining, concrete cleaner
Iodine (crystals)	Antiseptic, catalyst
Lithium metal	Batteries
Methylene chloride	Paint remover, solvent
Phosphoric acid	Fertilizer
Red phosphorus	Match striker plates, road flares
Sulfuric acid	Battery acid, drain cleaner
Toluene	Brake cleaner fluid

LAW ENFORCMENT RESPONSE

How Does a Typical Clandestine Laboratory Seizure Occur?

Typically, law enforcement gets a call or report of a potential clandestine laboratory. Depending on the validity of the information a response team (which may be a combination of local, state or federal officers) is dispatched, or a first responder (city police department or county sheriff) goes to the location, to verify if there is a potential clandestine lab. Once confirmed, the location is evacuated and a clandestine laboratory response team responds to begin the investigation. Once all the appropriate photos, evidence sampling, and other investigative issues are taken care of, a contract vendor (as part of the federal COPS program) responds to the scene to remove all chemicals, glassware, equipment, etc.

All law enforcement personnel who investigate and dismantle labs must be clandestine laboratory certified, which requires attending specialized training that is sanctioned by the Drug Enforcement Administration (DEA) and the Occupational Safety and Health Administration (OSHA). Because of the hazards of entering a clandestine lab all personnel who investigate and dismantle labs are required to wear personal protective equipment. Below is the basic list of the equipment that must be used and the associate costs. The (*) denotes equipment that has to be discarded after each laboratory investigation due to contamination.

No remediation is done to the structure or the property, simply the removal of all chemicals and lab items. If there are containers of chemicals outside the premises that pose a threat to the environment, or any other indicators, the Department of Environmental Protection is called to handle soil and/or water sampling and cleanup. If children are present, the Department of Children and Families is called to the scene. Nothing may be removed from the house and taken with the children or any arrestees because of contamination.

[27] Ibid.
[28] State of North Carolina. Department of Health and Human Services. Illegal Methamphetamine Laboratory Decontamination and Reoccupancy Guidelines. April 2005. http://www.epi.state.nc.us/epi/oii/methguidelines.pdf

2006 Clandestine Laboratory Investigators Personal Protective Equipment (PPE) List	
Description	**Total Cost**
Self Contained Breathing Apparatus 30-Minute Cylinder	$2,134.00
Clan Lab Monitor Field and Investigators Detector Kit	2,905.00
Ballistic Helmet and Vest	1,055.45
SWAT Coverall, Hood, Gloves, Respirator w/filter, gloves and other equipment*	486.70
TOTAL	$6,581.15

REMEDIATION STANDARDS

National Guidelines for the Cleanup of Clandestine Laboratories and Determining Cleanliness

The Office of National Drug Control Policy is in the process of revising the Guidelines for the Cleanup of Clandestine Drug Laboratories. The so-called "Red Book" includes voluntary standards, lessons learned, and best practices for methamphetamine laboratory cleanup and the removal of hazardous materials found at seized clandestine laboratories for federal, state, and local law enforcement and environmental officials.[29]

A problem with remediation of a clandestine laboratory is determining an acceptable level of "cleanliness" to assure the public that there are not any potential health risks. Currently, there are no national standards for remediated labs, and a baseline definition of "clean" is not available.[30] Fundamental research describing standards for "clean" still needs to occur.[31]

There is an ongoing debate about the effectiveness of using a feasibility-based standard rather than a long-term clinical standard. Because research into the long-term health effects associated with clandestine laboratories has just recently begun, health or risk based standards have not yet been determined.[32]

Remediation Standards in Other States

According to the National Alliance for Model State Drug Laws,[33] several states currently regulate the cleanup and remediation of clandestine laboratories, but state statutes specifically relating to the cleanup and remediation of clandestine laboratories vary from state to state.[34]

Given the growing concern regarding cleanup and remediation issues, the variety of approaches among states, the increasing number of states dealing with former meth labs, and the changing nature of labs, the Alliance has convened a national working group to address these issues. [35] The alliance is drafting a model act or model guidelines for the cleanup and remediation of methamphetamine laboratories that should be released next year. [36]

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[29] U.S. Congress. House Committee on Government Reform, Subcommittee on Criminal Justice. 2005. "Statement by Scott Burns, Deputy Director for State and Local Affairs, Office of National Drug Control Policy." 109th Congress.
[30] U.S. Congress. House Committee on Science. 2005. "Testimony of Robert Bell, Ph.D., President, Tennessee Technological University." 109th Congress.
[31] Ibid.
[32] Ibid.
[33] The National Alliance for Model State Drug Laws is a nonprofit bipartisan organization that resulted from the President's Commission on Model State Drug Laws. It was created to be a resource to assist states in assessing needs, strategizing, and implementing laws and policies to address alcohol and other drug problems.
[34] U.S. Congress. House Committee on Science. 2005. "Statement of Sherry Green, Esq., Executive Director of the National Alliance for Model State Drug Laws." 109th Congress.
[35] Ibid.
[36] Ibid.

The two most commonly used feasibility-based decontamination standards for methamphetamine is 0.1 micrograms per 100 square centimeters and 0.5 micrograms per square foot.[37] A microgram is one millionth of gram and there are 28.3 grams in an ounce. One hundred square centimeters is equivalent to the area about the size of a 3X5 index card. Arizona, North Carolina, Tennessee and Washington are among several states that require an indoor air quality standard of 0.1 micrograms per 100 square centimeters for methamphetamine. Several other states such as Tennessee, Washington, and California also regulate the level of lead, mercury and volatile organic compounds.

Several states have implemented policy standards to establish guidelines in rule. This allows for changes in indoor air quality standard values as research on levels of health risk improve. Oregon has set a policy standard of 0.5 micrograms per square foot; for methamphetamine; 10 micrograms per square foot for lead; and 0.05 micrograms per square foot for mercury. The bill allows the Department of Health the ability to adopt indoor air quality standards by rule.

DECONTAMINATION PROCESS AND DEMOLITION

The cleanup of residual substances that may persist on surfaces and furnishings may involve: removal of surface material layers; use of encapsulants and fixative sealers; neutralization of corrosives; steam cleaning; use of industrial steam and pressure washers; use of detergent washers; use of chemical neutralizers/cover-ups and "bake-out" of a property."[38] In rare cases of severe contamination, effective cleanup may only be accomplished by demolition of the contaminated structure.[39]

Based on the known physical properties of the chemicals associated with methamphetamine production, there is no current scientific evidence to suggest a continuing human health risk after a thorough decontamination.[40]

EFFECT OF HB 7065 CS

The bill provides a mechanism intended to prevent a person from unknowingly living in a former illegal clandestine laboratory that has not been decontaminated. The bill provides that a residential property must be quarantined by the Department of Health (DOH) if the residential property was used as a clandestine laboratory. A clandestine laboratory is defined as any location or area that is used or contaminated as a result of the manufacturing, processing, cooking, disposing, or storing of any illegal drug or substance. The residential property will remain quarantined until the Department of Health receives a certificate of fitness documenting that the property was properly decontaminated or demolished or a court order is presented requiring the quarantine to be lifted. No person may inhabit a quarantined residential property or remove the notice of a quarantine. A person who violates the provisions of a quarantine commits a second degree misdemeanor.

The bill does not create a new penalty, but cross-references existing authority under the quarantine provision already granted to the Department of Health in s. 381, F.S.. Under s. 381.0011, F.S., DOH has the authority to declare, enforce, modify, or abolish a quarantine placed on persons and premises as the circumstances indicate in order to protect the public from unsafe conditions that pose a threat to public health. Section 381.0012(5), F.S., also provides that it is the duty of every state and county attorney, sheriff, police officer, and other appropriate city and county officials to assist the department in enforcing the state health laws.

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[37] Ibid.
[38] Chesley, Michelle R., M.D., Department of Emergency Medicine, Howard University Hospital. 1999. Methamphetamines: an epidemic of clandestine labs and health risk. http://www.health.state.mn.us/divs/eh/meth/lab/mchesley.pdf (February 11, 2006).
[39] Colorado Department of Public Health and Environment. Cleanup of Clandestine Methamphetamine Labs Guidance Document. 2003. http://www.cdphe.state.co.us./hm/methlab.pdf (February 11, 2006.)
[40] Oregon Department of Human Services, Drug Lab Clean-up Program. "Chemicals used in Methamphetamine Manufacture, http://www.oregon.gov/DHS/ph/druglab/chemicals.shtml (February 11, 2006).

The bill provides the following:

- Creates definitions in chapter 893, F.S., for "clandestine laboratory," "contaminated," "contamination assessment specialist," "decontamination," "decontamination specialist," and residential property."
- Requires law enforcement personnel to enforce a quarantine on a clandestine laboratory if the lab is located in a residential property. Enforcement occurs at the time law enforcement secures and removes evidence from the property.
- Requires law enforcement to post a notice on the residential property at the time they are collecting and removing evidence.
    - The notice must state: The property is quarantined and a clandestine lab was found on the residential property; the date of quarantine; the name of agency posting the quarantine; a statement specifying the hazards that may remain and that exposure to the substances may be harmful and may pose a threat to public health and the environment; that it is unlawful for unauthorized persons to enter the contaminated property; a statement explaining how to have the quarantine lifted; and that it is a second degree misdemeanor to remove the notice.
- Requires local law enforcement to immediately notify the local health officer and the Department of Health, Division of Environmental Health. Law enforcement must provide the department contacts with the name of the property owner or property manager and address of the property.
- DOH is responsible for contacting the property owner or manager, within 5 days by mailing them a letter of notification of the quarantine, a list of contamination assessment specialists, a list of decontamination specialists, and any other information the department deems appropriate.
- Allows property owners to petition a court to have a court order issued to lift the quarantine in the event they believe their property was wrongfully quarantined or has been decontaminated or demolished, but DOH refuses or fails to lift the quarantine.
- Provides residential property owners the option to demolish a home in lieu of decontamination, with certain requirements.
- Provides immunity from liability to property owners from health-based civil actions, with certain restrictions, if the residential property owner meets the decontamination standards or opts to demolish the residential property. The property owner or manager must have been issued a certificate of fitness by a contamination assessment specialist and a letter of reoccupancy issued by the Department of Health.
- Requires the department to compile and maintain a list on the internet of "contamination assessment specialists" and "decontamination specialists." The department must also denote on the list if a contactor is bonded and insured. The list will also be mailed to the residential property owner or property manager.
- Allows contamination assessment specialists or decontamination specialists the ability to request copies of any available law enforcement reports or information relating to the clandestine laboratory activities, to assist them in determining the levels of contamination in a quarantined residential property.
- Provides the Department of Health the authority to promulgate rules for the following:
    - Create a uniform notice and letter.
    - Establish standards for indoor air quality regarding contaminants produced by clandestine laboratory activities. The standards must include values for methamphetamine, lead, mercury, and volatile organic compounds and be consistent with values adopted by other states or they must comply with national standards.
    - Establish standards for the cleanup and testing of clandestine laboratories.
    - Establish the requirements for persons authorized to perform contamination assessments and decontamination.
    - Establish a "certificate of fitness" that will be issued by a contamination assessment specialist to function as documentation signifying that a home has been properly decontaminated.
    - Establish a letter of reoccupancy that will notify the residential property owner that the quarantine is lifted and that the property may be reoccupied.

C. SECTION DIRECTORY:

Section 1. Amends s. 893.02, F.S., providing definitions for clandestine laboratory, contaminated, contamination assessment specialist, decontamination, decontamination specialist, and residential property.

Section 2. Creates s. 893.121, F.S., providing for a quarantine of any residential property where clandestine laboratory activities occur; establishing a uniform notice and letter of notification; providing that a notice is posted at the site of a quarantine; providing requirements that a letter be sent to a residential property owner or property manager; providing an alternative to residential property owners to have a quarantine lifted; and providing limitations and enforcement provisions for habitation of quarantined residential property.

Section 3. Creates s. 893.122, F.S., providing the option of demolition of contaminated residential property under certain conditions; providing immunity from health-based civil actions for residential property owners who have met certain criteria; and providing an exception from the immunity clause for individuals convicted of operating the clandestine laboratory.

Section 4. Creates s. 893.123, F.S., providing rulemaking to adopt clandestine laboratory decontamination standards; providing guidelines for issuance of a certificate of fitness to indicate that decontamination is complete; providing guidelines for issuance of a letter of reoccupancy; and providing requirements for lifting a quarantine of a demolished property.

Section 5. Creates s. 893.124, F.S., requiring the department to compile and maintain a list of persons authorized to perform contamination assessments and decontamination; requiring the department to specify qualifications for persons authorized to perform contamination assessments and decontamination; providing responsibilities for decontamination specialists; providing authority for contamination assessment specialist or decontamination specialist to request certain documents from law enforcement; and providing for issuance of a certificate of fitness by a contamination assessment specialist.

Sections 6 through 12 amend s. 465.016, 465.023, 856.015, 893.135, 944.47, 951.22, and 985.4046, F.S., correcting cross-references.

Section 13. Provides that the bill will take effect on July 1, 2006

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   No dedicated source of revenue.

2. Expenditures:

   Insignificant.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill will prohibit an owner from inhabiting a quarantined residential property or offering the property to the public for habitation. The owner will be required to meet the decontamination standards established by the Department of Health and will be required to pay for the costs of assessment and cleanup. Costs for clandestine laboratory cleanup will vary depending upon the nature and extent of the cleanup needed. The size, duration, frequency, and types of chemicals used are all variables that impact the degree of contamination. According to the Washington State Department of Health, decontamination costs average $6,500 per 1,200 square-feet.[41] According to an Arkansas news article, clean-up costs generally range from $2,000 to $10,000; depending on the size of the lab.[42]

D. FISCAL COMMENTS:

The analysis by DOH assumes that 338 clandestine drug laboratories will be seized per year—the number that was seized in 2005. The fiscal impact is insignificant.

In 2005, the Legislature passed a bill placing quantity and point of sale restrictions on over-the-counter cold medicines that contain ephedrine, pseudoephedrine or phenylpropanolamine. States that have placed similar restrictions on the sale of ephedrine, pseudoephedrine or phenylpropanolamine have seen a dramatic decrease in the incidence of clandestine laboratories.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds. This bill does not reduce the percentage of state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

Several constitutional issues have been mentioned as potential items of concern, in particular, the immunity from health-based civil action and the quarantine of personal property. As currently provided in the bill, the immunity from health-based civil action provision encourages property owners to decontaminate their property. Authority to quarantine a property that may pose a health hazard is well established for instances where a quarantine is meant to protect the public from harm. Each issue is discussed in detail below.

Access to Courts

This bill provides that a residential property owner who has met the decontamination standards, or has demolished the residential property "shall have immunity from health-based civil actions brought by any future owner, renter, or other person who occupies the 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 provision in the bill could possibly be an unconstitutional violation of Article I, s. 21, of the Florida Constitution.

[41] Washington State Department of Health, Division of Environmental Health, Office of Environmental Health and Safety. Information for Landlords and Property Owners. http://www.doh.wa.gov/ehp/ts/CDL/landlordtips.htm (February 11, 2006).
[42] Bradford, Michelle. 2000. U.S. Denies funds for State Meth Cleanup; Officials Mull Options. http://www.kci.org/meth_info/sites/ark_drug%20cleanup.htm (February 12, 2006).

Article I, section 21,. provides the following:

> SECTION 21. Access to courts.--The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay.

The right to go to court to resolve disputes is a fundamental right.[43] To make a claim of denial of access to courts, an aggrieved party must demonstrate that the Legislature has abolished a common-law right previously enjoyed by the people of Florida.[44] A person's guaranteed access to the courts should not be unduly or unreasonably burdened or restricted.[45] If the Legislature asserts a valid public purpose, it can restrict access to the courts as long as it provides a reasonable alternative to litigation. It may be possible that this bill could be found to be an unreasonable burden to an individual's right of access to courts. This bill is taking away a previously available cause of action to any person who is injured by the negligent use of a person's property simply because the property owner has followed the decontamination or demolition procedures of the bill. The Florida Supreme Court, in the case Kluger v. White, 281 So.2d 1 (Fla. 1973), held that, "where a right of access to the courts for redress for a particular injury has been provided by statutory law predating the adoption of the Declaration of Rights of the Constitution of Florida, or where such right has become a part of the common law of the State, the Legislature is without power to abolish such a right without providing a reasonable alternative to protect the rights of the people of the State to redress for injuries, unless the Legislature can show an overpowering public necessity for the abolishment of such right, and no alternative method of meeting such public necessity can be shown".[46]

Taking of Property

Article X, s. 6, Fla. Stat. provides the following:

> SECTION 6. Eminent domain.--
>
> (a) 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.
> (b) 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.

Takings issues could arise based on the fact that this bill allows a government entity to force a person from their property and restricts any devise of the property until the residential property is decontaminated or demolished. A state law quarantining property pursuant to this bill probably would not be considered a taking. However, 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.[47] 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.[48] 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:[49]

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[43] *DR Lakes Inc. v. Brandsmart U.S.A. of West Palm Beach*, 819 So. 2d 971 (Fla. Dist. Ct. App. 4th Dist. 2002).
[44] *Yachting Promotions, Inc. v. Broward Yachts, Inc.*, 792 So. 2d 660 (Fla. Dist. Ct. App. 4th Dist. 2001); *Strohm v. Hertz Corporation/Hertz Claim Management*, 685 So. 2d 37 (Fla. Dist. Ct. App. 1st Dist. 1996).
[45] *Preferred Medical Plan, Inc. v. Ramos*, 742 So. 2d 322 (Fla. Dist. Ct. App. 3d Dist. 1999); *Swain v. Curry*, 595 So. 2d 168 (Fla. Dist. Ct. App. 1st Dist. 1992).
[46] *Id.* at 4.
[47] *Albrecht v. State*, 444 So. 2d 8 (Fla. 1984); *Conner v. Reed Bros., Inc.*, 567 So. 2d 515 (Fla. Dist. Ct. App. 2d Dist. 1990).
[48] *Department of Agriculture and Consumer Services v. Mid-Florida Growers, Inc.*, 521 So. 2d 101 (Fla. 1988).
[49] *Graham v. Estuary Properties, Inc.*, 399 So. 2d 1374 (Fla. 1981).

- 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.
- 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.[50] Reasonable regulations pursuant to the police power of the state, intended to promote public health, safety, or general public welfare, may be adopted and enforced without violating the constitutional rights of property owners.

B. RULE-MAKING AUTHORITY:

The bill provides the Department of Health rule-making authority to promulgate rules to:

- Establish a 'certificate of fitness' that acts as documentation signifying that a home has been properly decontaminated.
- Establish a letter of reoccupancy that will notify the residential property owner that the quarantine is lifted and that the property may be reoccupied.
- Establish indoor air quality standards.
- Establish the standards for cleanup and testing of clandestine laboratories.
- Establish the requirements for persons authorized to perform contamination assessments and decontamination.
- Create a uniform notice and letter.
- Specify the requirements of persons authorized to perform clandestine laboratory cleanup.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On February 22, 2006, the Health Care Regulation Committee adopted a strike-all amendment offered by Chairman Garcia. The strike-all amendment significantly reduced the fiscal impact to the Department of Health by transferring the contamination assessment and decontamination to qualified independent contractors in the private sector; streamlined several requirements and processes required in the bill to clarify the roles of law enforcement and the Department of Health; and addressed concerns brought to the attention of staff by the Florida Department of Law Enforcement, Florida Sheriff's Association, and the Department of Health.

The PCB, as amended, was reported favorably by the Health Care Regulation Committee.

On April 4, 2006, the Criminal Justice Committee adopted an amendment that clarified that the department has the obligation to notify a residential property owner that the property has been quarantined.

The analysis is drafted to the committee substitute.

[50] *Graham v. Estuary Properties, Inc.*, 399 So. 2d 1374 (Fla. 1981); *State Plant Bd. v. Smith*, 110 So. 2d 401 (Fla. 1959).