HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1 Abatement of Drug Paraphernalia
SPONSOR(S): Peterman
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Homeland Security & Public Safety	8 Y, 0 N	Kramer	Kramer
2) Safety & Security Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

HB 1 creates a nine member task force within the Executive Office of the Governor to recommend strategies for reducing the availability and use of drug paraphernalia. The bill specifies the members and their appointment, the chair's selection, the minimum number and location of meetings, public access to meetings and records, reimbursement for per diem and travel expenses, topics for task force review, and deadlines for submitting reports of findings and recommendations. The task force must hold its first meeting by July 15, 2007. The Office of Drug Control is to provide staff support within existing resources. The bill abolishes the task force on July 1, 2008.

This bill appears to have a minimal fiscal impact on the state. This bill does not appear to have a fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government--this bill creates a nine member task force that sunsets on July 1, 2008.

B. EFFECT OF PROPOSED CHANGES:

Current situation

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., (the "Florida Comprehensive Drug Abuse Prevention and Control Act") or s. 877.111, F.S., (proscribing the inhalation, ingestion, possession, sale, purchase, or transfer of harmful chemical substances). Further, s. 893.145, F.S., provides a non-exclusive list of items that fall within the statutory definition of "drug paraphernalia.

Section 893.146, F.S., provides 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.

- Expert testimony concerning its use.

Section 893.147, F.S., proscribes the possession, use, manufacture, delivery, transportation, and advertisement of drug paraphernalia. It is a first degree misdemeanor to use or possess with intent to use drug paraphernalia:

- To plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled substance in violation of ch. 893, F.S.; or

- To inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of ch. 893, F.S.[1]

It is a third degree felony to deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used:

- To plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled substance in violation of ch. 893, F.S.; or

- To inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of ch. 893, F.S. [2]

If the person committing the delivery and manufacturing offense delivered the drug paraphernalia to a minor, the person commits a second degree felony. It is a first degree misdemeanor to sell or otherwise deliver hypodermic syringes, needles, or other such objects to a minor, with some lawful dispensing exceptions.

It is a third degree felony to use, possess with the intent to use, or manufacture with the intent to use drug paraphernalia, knowing or under circumstances in which one reasonably should know that it will be used to transport a controlled substance in violation of ch. 893, F.S., or contraband, as defined in s. 932.701(2)(a)1., F.S.

It is a first degree misdemeanor to place in any newspaper, magazine, handbill, or other publication any advertisement, knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia.

Proving requisite intent is often difficult because some items sold have multiple and legal uses[3] or contain features that may suggest a use other than an illegal use or support a claim that the item is not being sold for an illegal use.[4]

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[1] "To prove possession of drug paraphernalia, the state must show that the appellant had in his possession drug paraphernalia and that he had knowledge of its presence." *Lawson v. State*, 666 So.2d 193, 194 (Fla. 2d DCA 1995).

[2] "The statute does not require that a person unequivocally know that the paraphernalia will be used for an illicit purpose; rather the state must only show that the defendant knew or reasonably should have known that the drug paraphernalia would be used for such purposes. It is important to note that the intent at issue in the statute is that of the seller/defendant, not that of the buyer." *Baldwin v. State*, 498 So.2d 1385, 1386 (Fla. 5th DCA 1986).

[3] In *Subuh v. State*, 732 So.2d 40, 44 (Fla. 2d DCA 1999), the court noted that a glass pipe sold by the defendant and which police claimed was a crack pipe was "very similar to the 'glass tube' or 'pipette' commonly found in any chemistry laboratory or glass 'straw' formerly used in hospitals for patients to drink liquids, except this one was shorter." In reversing the conviction, the court stated that "[a]lthough we are hard pressed to think of a probable lawful use for this tube when purchased from this location, there are many lawful uses for glass tubing."

A “head shop” is a term defining a type of establishment allegedly specializing in selling drug paraphernalia. There has been a longstanding tension between “head shop” owners and law enforcement, prosecutors, and some communities over the sale of such items. Head shop owners argue that they only engage in legitimate business activities and that they only sell such items for legitimate uses, such as for use in smoking tobacco. They contend that possession, sale, and purchase of such items are not per se illegal. They further contend that many of the same items they sell in their shops are also sold in convenience stores and general retail stores and over the Internet.

Law enforcement, prosecutors, and opponents of head shops argue that, despite the claims of head shop owners that they sell such items only for legitimate uses, the owners are really engaged in selling drug paraphernalia to illicit substance users and producers. They contend that some of the items sold by head shop owners have little or no real use to the general public outside of the illicit drug trade. Further, they contend that the prevalence or number of such items within one establishment and as part of the establishment’s total inventory indicate that the true motive of head shop owners is to profit from the illicit drug trade under the pretext of engaging in a legitimate business.

Some communities have raised concerns that head shops adversely affect quality of life, increase accessibility to drug paraphernalia, and attract or engage in criminal activity. Communities throughout the nation have taken different approaches to address concerns about head shops, including outright prohibition; moratoriums on new licenses; special business classifications; nuisance abatement; fees and compliance checks on head shops that sell tobacco paraphernalia; limitations on hours of operation, window displays, and signage; lighting or security requirements; zoning; annexation of commercial properties; development standards; separation buffers; public education campaigns; media advisories of enforcement actions; and enforcement actions relating to violations of local ordinances or state laws.

Proposed changes

This 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 abating access to and the use and proliferation of drug paraphernalia, as that term is defined in s. 893.145, F.S.

The task force consists of six members appointed by the Governor:

- 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.

[4] For example, store owners arrested in a drug paraphernalia sting claim that they are selling glass tubes with miniature roses as “ornamental novelty items”; the police claim the tubes are “nothing but ready-made crack pipes.” Stores accused of selling glass tubes for crack pipes. *St. Petersburg Times* (December 31, 1998). Reporting on a 2004 U.S. Customs seizure of items in a Miami-Dade County warehouse, the South Florida Sun-Sentinel noted that the items included bongs “shaped as guns,” “disguised as lipstick tubes,” and “decorated with cartoon characters such as Cat in the Hat.” One bong, which was “disguised as a thermos, was placed inside a Simpsons lunchbox.” Customs agents raid drug warehouse. *South Florida Sun-Sentinel* (May 4, 2004). Similarly, reporting on a 2005 drug paraphernalia sting of head shops in Palm Beach County, the Palm Beach Post quoted one federal official as stating that bong and other drug paraphernalia seized were “disguised as cartoon characters.” Alleged drug items seized at 3 shops. *Palm Beach Post* (February 17, 2005).

These members must be representative of the geographic regions and ethnic and gender diversity of this state.

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.

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 localities throughout this state which have a significant urban business district or have experienced problems with illicit controlled-substance activity resulting, in part, from access to and the use and proliferation 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.

Members of the task force 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 required to study and take testimony regarding:

- The problem of access to and the use and proliferation of drug paraphernalia in this state;
- 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 abate access to, use and proliferation of drug paraphernalia, including, whether new or amended laws and rules are needed; and
- Approaches to abate access to and the use and proliferation 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.

The task force is abolished July 1, 2008.

C. SECTION DIRECTORY:

Section 1. Creates the Drug Paraphernalia Abatement Task Force and provides for its membership and responsibilities.

Section 2. Provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

Task force members will not receive any salary, but are entitled to reimbursement for travel and per diem expenses in accordance with s. 112.061, Florida Statutes. Members will be required to conduct at least three public meetings in different localities throughout the state, and thus will incur travel and per diem costs. The bill does not specify which entity is responsible for paying for the task force members' travel and per diem expenses; thus, by default, such expenses tend to be the responsibility of the agency that employs the appointed member. House staff estimates a non-recurring, fiscal impact of approximately $17,550 to the appointing agencies which would be funded within existing resources. This estimate assumes costs of $650 per member per meeting. [Nine panel members for three meetings.] All other costs including staff support and publication expenses will be absorbed by the Office of Drug Control within the Executive Office of the Governor.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

See above.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No comment submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES