

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1 Drug-Related Task Forces
SPONSOR(S): Peterman
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Homeland Security & Public Safety</u>	<u>8 Y, 0 N</u>	<u>Kramer</u>	<u>Kramer</u>
2) <u>Safety & Security Council</u>	<u>14 Y, 0 N, As CS</u>	<u>Kramer</u>	<u>Havlicak</u>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

HB 1 creates the Drug Paraphernalia Abatement Task Force, 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.

The bill also creates a thirteen-member Task Force for the Remediation of Illicit Drug Labs 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 methamphetamine or other contraband has been illegally manufactured. The bill specifies the membership and duties of the task force.

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 two task forces.

B. EFFECT OF PROPOSED CHANGES:

Current situation

Drug paraphernalia: 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 uses³ 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

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.

Clandestine laboratories: Chapter 893, Florida Statutes, is known as the “Florida Comprehensive Drug Abuse Prevention and Control Act.” Section 893.03, F.S. divides controlled substances into five categories ranging from Schedule I to Schedule V. The scheduling of a controlled substance is relevant to how it can be prescribed and to the severity of the criminal offense for its illicit possession, sale or purchase.⁵ Methamphetamine is a Schedule II controlled substance under Florida law and federal law.⁶ 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, methamphetamines are either imported by drug traffickers or manufactured in small “clandestine” laboratories (usually household kitchens) using recipes involving commonly available chemicals derived from cold medicines, drain cleaners, over-the-counter diet pills, battery acid, and matches.

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

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 bongos “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).

⁵ A drug in Schedule I has a “high potential for abuse and has no currently accepted medical use in treatment in the United States.” A drug in Schedule V has a low potential for abuse relative to the substances in Schedule IV and has a currently accepted medical use in treatment in the United States, and abuse of such compound, mixture or preparation may lead to limited physical or psychological dependence relative to the substances in Schedule IV.”

⁶ s. 893.03(2)(c)4., F.S. and s. 21 U.S.C. § 812

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.

Proposed changes

Drug paraphernalia: 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.

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.

Clandestine laboratories: The bill creates the thirteen-member Task Force for the Remediation of Illicit Drug Labs 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 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 must 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.

C. SECTION DIRECTORY:

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

Section 2. Creates the Task Force for the Remediation of Illicit Drug Labs.

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:

The members of the task forces created by this bill 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.

Drug paraphernalia task force: 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.

Illicit Drug Lab Task Force: House staff estimates a non-recurring, fiscal impact of approximately \$25,350 to the appointing agencies which would be funded within existing resources. This estimate assumes costs of \$650 per member per meeting. [Thirteen 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, the Department of Law Enforcement, the Department of Health, the Department of Community Affairs and the Department of Environmental Protection.

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

The bill sponsor did not submit any comment regarding the bill as filed.

The council chair chose not to submit any comments regarding the council substitute.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

The Safety & Security Council adopted an amendment which provided for the creation of the Task Force for the Remediation of Illicit Drug Labs. The council reported the bill favorably as a council substitute.