

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

May 19, 2005

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: HB164 by Berman (Relating to the civil and criminal consequences of engaging in certain conduct related to the manufacture of methamphetamine and to the distribution and retail sales of pseudoephedrine; providing penalties.), **As Engrossed**

Estimated Two-year Net Impact to General Revenue Related Funds for HB164, As Engrossed: a positive impact of \$3,809,265 through the biennium ending August 31, 2007.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

| Fiscal Year | Probable Net Positive/(Negative) Impact to General Revenue Related Funds |
|-------------|--|
| 2006 | \$2,642,779 |
| 2007 | \$1,166,486 |
| 2008 | \$1,166,486 |
| 2009 | \$1,166,486 |
| 2010 | \$1,166,486 |

All Funds, Five-Year Impact:

| Fiscal Year | Probable Savings/ (Cost) from <i>GENERAL REVENUE FUND</i> 1 | Probable Revenue Gain from <i>GENERAL REVENUE FUND</i> 1 | Probable Revenue (Loss) from <i>FOOD & DRUG REGISTRATION</i> 5024 | Probable Savings from <i>FOOD & DRUG REGISTRATION</i> 5024 |
|-------------|---|--|---|---|
| 2006 | (\$1,294,221) | \$3,937,000 | (\$1,818,000) | \$631,742 |
| 2007 | (\$1,458,514) | \$2,625,000 | (\$1,212,000) | \$631,742 |
| 2008 | (\$1,458,514) | \$2,625,000 | (\$1,212,000) | \$631,742 |
| 2009 | (\$1,458,514) | \$2,625,000 | (\$1,212,000) | \$631,742 |
| 2010 | (\$1,458,514) | \$2,625,000 | (\$1,212,000) | \$631,742 |

| Fiscal Year | Change in Number of State Employees from FY 2005 |
|-------------|--|
| 2006 | 19.0 |
| 2007 | 19.0 |
| 2008 | 19.0 |
| 2009 | 19.0 |
| 2010 | 19.0 |

Fiscal Analysis

The bill would amend the Health and Safety Code by including items used in the manufacture, processing, analyzing, storing, or concealing of methamphetamine in the offense of possession or transport of certain chemicals with intent to manufacture a controlled substance.

The bill would restrict the sale of solid dose forms of pseudoephedrine to businesses that own and operate a pharmacy and to those businesses that obtain a certificate of authority from the Department of State Health Services (DSHS). DSHS would be required to issue certificates, collect fees, and inspect firms with a certificate of authority to assure compliance with the law.

The bill would place additional requirements on the regulation of wholesale nonprescription drug distributors.

The Health and Human Services Commission would be required to adopt rules related to implementing certain provisions of the bill.

The bill would allow the Department of Family and Protective Services (DFPS) to take possession of a child that is on the premises where there is the manufacture of methamphetamine.

Methodology

The bill would amend the Health and Safety Code by including items used in the manufacture, processing, analyzing, storing, or concealing of methamphetamine in the offense of possession or transport of certain chemicals with intent to manufacture a controlled substance. An offense under this provision is punishable as a felony of the second degree. The number of persons in possession of materials designed, assembled, or adapted for use in the manufacture, processing, analyzing, storing, or concealing of methamphetamine is unknown. Since the bill proposes punishment for elements of criminal behavior for which there is no historical data, determining the impact of the felony provision bill on the criminal justice population is not possible. The impact of this provision of the bill on the community supervision population or incarcerated population could be significant depending on the frequency of arrests and prosecutions for this behavior.

The bill would also amend the Health and Safety Code by requiring wholesalers of pseudoephedrine to make available all records of transactions, and require wholesalers to report orders of suspicious quantities of pseudoephedrine. It is assumed that the number of persons convicted under this provision of the bill would not result in a significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies.

DSHS will issue certificates of authority to all firms that sell over-the-counter pseudoephedrine products in solid dose form, except those firms that own and operate a licensed pharmacy. DSHS estimates that 26,250 firms would choose to obtain a certificate. DSHS estimates that the certificate fee would be \$200 for a two-year certificate. Total revenue generated would be \$3,937,000 in 2006 and \$2,625,000 in each subsequent year.

DSHS estimates that 30 full-time-equivalent positions (FTEs) would be needed to issue certificates and perform inspections of retailers. These FTEs include four Administrative Technicians, six Public Health Technicians, two Managers, 16 Environmental Specialists III, and two Environmental Specialists IV. FTEs would audit applications and perform inspections of firms requiring a certificate of authority. Salary costs total \$684,828 in 2006 and \$913,104 in each subsequent year. Benefits total \$203,668 in 2006 and \$271,557 in each subsequent year. Rent, travel, and other operating costs total \$341,885 in 2006 and \$84,903 in each subsequent year. Computer hardware totals \$50,578 in 2006 and \$24,588 in each subsequent year.

It is assumed that one case per year would be referred to the State Office of Administrative Hearings. Based on historical average cost data, it is assumed that each case would cost \$3,262.

The bill would exempt from licensing all wholesale prescription drug distributors. DSHS indicates that this would result in a loss of revenue totaling \$1,818,000 in 2006 and \$1,212,000 in each subsequent

year. As a result in the loss of this licensing activity, DSHS would reduce licensing staff by 11 FTEs (one Environmental Specialist IV, one Administrative Technician II, and nine Environmental Specialist IIIs). Savings from salaries, benefits, travel, and other operating costs would total \$631,742 each year.

Under the provisions of the bill, DFPS would be able to take possession of a child where the respondent has personal knowledge or information furnished by another indicating that the parent or person who has possession of the child permitted the child to remain on the premises used for the manufacture of methamphetamine. DFPS indicates that current practice is to investigate abuse/neglect reports when a child is found to be at a location used to manufacture methamphetamines. DFPS indicates that there would not be an increase in the number of children placed in foster care as a result of this bill, as the bill requirements are consistent with current practices. DFPS indicates that they would update the IMPACT tracking system to include "removed due to methamphetamine manufacture" to allow tracking of the incidence with which children are removed for this reason.

Technology

Computer hardware costs would total \$50,578 in 2006 and \$24,588 in each subsequent year.

Local Government Impact

Local judges may note an increase in the number of removals in which no alternate options to prevent removal of a children could be taken because the manufacture of methamphetemines was involved.

Source Agencies: 537 Department of State Health Services, 529 Health and Human Services Commission, 530 Department of Family and Protective Services

LBB Staff: JOB, KF, KJG, PP, LW