

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION**  
**Revision 1**

**May 5, 2005**

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

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

**IN RE: SB112** by Van de Putte (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.), **Committee Report 1st House, Substituted**

**Estimated Two-year Net Impact to General Revenue Related Funds** for SB112, Committee Report 1st House, Substituted: a negative impact of (\$143,115) 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	(\$66,963)
2007	(\$76,152)
2008	(\$76,152)
2009	(\$76,152)
2010	(\$76,152)

**All Funds, Five-Year Impact:**

Fiscal Year	Probable (Cost) from <i>GENERAL REVENUE</i> <i>FUND</i> 1	Probable Revenue Gain from <i>GENERAL REVENUE</i> <i>FUND</i> 1	Change in Number of State Employees from FY 2005
2006	(\$71,963)	\$5,000	1.0
2007	(\$81,152)	\$5,000	1.0
2008	(\$81,152)	\$5,000	1.0
2009	(\$81,152)	\$5,000	1.0
2010	(\$81,152)	\$5,000	1.0

**Fiscal Analysis**

The bill would require the Department of State Health Services (DSHS) to implement a methamphetamine watch program and to develop a grant program to fund retailers' activities in the program.

The bill specifies retailer requirements for product placement, security and surveillance, and staff training for over-the-counter sales of certain forms of pseudoephedrine. The bill establishes an administrative penalty to be imposed by DSHS for violations. A process for administrative hearings before the State Office of Administrative Hearings (SOAH) and appeals for judicial review would also

be established. The Attorney General is authorized to sue to collect penalties that have been imposed and are not paid.

Additionally, 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. Such an offense would be punishable as a felony of the second degree. The bill proposes punishments for elements of criminal behavior for which there is no historical data; therefore the fiscal impact on the State from this provision cannot be determined. The impact of the bill to the community supervision population or incarcerated population could be significant depending on the frequency of arrests and prosecutions for persons affected by this provision.

DSHS will adopt the existing MethWatch program materials developed by the Consumer Healthcare Product Association. Printing, postage, and supplies for this program will total \$12,860 per year.

It is assumed that any new complaints, investigations or cases referred to the Office of the Attorney General as a result of implementation of the provisions of the bill could be absorbed by current resources.

It is assumed that DSHS would require one new full-time-equivalent position (FTE) to investigate complaints of retail firms. The FTE would be hired December 1, 2005, so salary, benefits, travel, and certain operating costs would be for only nine months of fiscal year 2006. Salary is assumed to be \$24,741 in the first year and \$32,988 in each subsequent year. Benefits are assumed at 29.74 percent of salary. Operating costs are assumed to be \$11,408 in the first year and \$5,786 in subsequent years. In-state travel costs are assumed to be \$12,334 in the first year and \$16,445 in each subsequent year. Total costs for the investigation of complaints are estimated to be \$55,841 in fiscal year 2006 and \$65,030 in subsequent fiscal years.

It is assumed that existing staff at DSHS would promulgate rules related to the bill.

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.

It is assumed that five penalties would be assessed each year, each for \$1,000.

Under 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 methamphetamine. DFPS indicates that there will 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.

Potentially, the grant program under Article 2, Sec. 2.01 (Sec. 468.005) could cost. However, an estimate has not been prepared at this time.

### **Technology**

Computer hardware costs would total \$2,224 in fiscal year 2006 and \$1,468 in subsequent fiscal years.

## **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 methamphetamine was involved.

**Source Agencies:** 405 Department of Public Safety, 537 Department of State Health Services, 530 Department of Family and Protective Services

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