Session Law 08-184

Florida Senate & House of Representatives

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### LEGISLATIVE SUPPLEMENT "B" - SESSION LAW ABSTRACT

**Sess. Law #** 2008-184  | **Sec. #** | **LOF cite**
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**Prime Bill #** HR 173  | **Comp./Sim. Bills** SB 390

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### COMMITTEE RECORDS

<table>
<thead>
<tr>
<th>H/S</th>
<th>Committee</th>
<th>Year</th>
<th>Record Series: Folder title, etc.</th>
<th>Loc. Cite</th>
</tr>
</thead>
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<tr>
<td>H</td>
<td>House, etc</td>
<td>08</td>
<td>Bill File: <em>(HR 173)</em></td>
<td>12/350</td>
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<td>08</td>
<td>No meeting File</td>
<td>14/259</td>
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<tr>
<td>H</td>
<td>Policy &amp; etc</td>
<td>08</td>
<td>Bill Files</td>
<td>14/286</td>
</tr>
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<td>08</td>
<td><em>(SB 390)</em> BF</td>
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- **Meeting 2/6/08 - HR 173**
- **Meeting 2/11/08**
- **Meeting 4/11/08**
- **Meeting 4/16/08**
- **Meeting 12/24/08**

- continued on reverse

### Senate/House Journals

<table>
<thead>
<tr>
<th>Page #</th>
<th>?</th>
<th>Date</th>
<th>Page #</th>
<th>?</th>
<th>Date</th>
</tr>
</thead>
</table>

### Committee/Floor Tapes

<table>
<thead>
<tr>
<th>H/S</th>
<th>c/f</th>
<th>Committee/subcommittee name</th>
<th>Date</th>
<th>#</th>
<th>Location Cite</th>
</tr>
</thead>
</table>

### Other Documentation

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<th>Location Cite</th>
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<td>12/2941</td>
</tr>
<tr>
<td>Meeting 4/16/08</td>
<td>12/2746</td>
</tr>
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H 165 (CONTINUED)

04/04/08 HOUSE On Council agenda—Government Efficiency & Accountability Council, 04/06/08, 9:00 am, 404–H—Not conv. read

04/07/08 HOUSE On Council agenda—Government Efficiency & Accountability Council, 04/08/08, 9:00 am, Morris Hall

04/09/08 HOUSE CS by Government Efficiency & Accountability Council, 04/12 NAYS 0—HJ 00517

04/14/08 HOUSE CS read 1st time on 04/14/08 —HJ 00565, CS filed

04/15/08 HOUSE Referred to—Calendar—HJ 00526

04/24/08 HOUSE Placed on Special Order Calendar, Read 2nd time—HJ 00636, Amendments adopted—HJ 00639

04/25/08 HOUSE Read 3rd time—HJ 00678, Passed as amended, YEAS 112 NAYS 0—HJ 00679

04/25/08 SENATE In Messages, Received, referred to Governmental Operations, General Government Appropriations—SJ 00859, Withdrawn from Governmental Operations, General Government Appropriations—SJ 00837, Substituted for CS/SBS 985—SJ 00837, Read 2nd time—SJ 00837

04/28/08 SENATE Read 3rd time—SJ 00864, Amendment(s) adopted—SJ 00865, YEAS 35 NAYS 0—SJ 00665

05/01/08 HOUSE In returning messages

05/01/08 HOUSE Concurred—HJ 01699, CS passed as amended, YEAS 118 NAYS 0—HJ 00699, Ordered engrossed, then enrolled—HJ 01699

06/11/08 Signed by Officers and presented to Governor

06/17/08 Approved by Governor, Chapter No 2008–71, Sec 11.60

H 167 GENERAL BILL/CS/IST ENG by Economic Expansion & Infrastructure Council; Cretul; (CO-SPONSORS) Holder; Nehr; Precourt (Similar CS/CSS 0044, Compare CSS/CS 1328, CSS/CSS/CSN ENGS 1992)

Temporary Motor Vehicle License Tags (RPCC). Revises provisions for placement of temporary tags on vehicles, revises provisions for implementation of electronic, print-on-demand, temporary tag issuance system; authorizes certain motor vehicle dealers to charge fee for certain circumstances, authorizes limited use of backup manual issuance method, authorizes department to adopt rules, etc Effective Date 05/22/2008

05/27/07 HOUSE Filed

10/12/07 HOUSE Referred to Economic Expansion & Infrastructure Council, Policy & Budget Council, Referred to Infrastructure—EEI by Economic Expansion & Infrastructure Council

02/14/08 HOUSE On Committee agenda—Infrastructure (EEI), 02/21/08, 1:30 pm, 404–H

02/21/08 HOUSE Favorable with 1 amendment(s) by Infrastructure (EEI), YEAS 8 NAYS 0

03/04/08 HOUSE Introduced, referred to Economic Expansion & Infrastructure Council, Policy & Budget Council—HJ 00018, Referred to Infrastructure (EEI) by Economic Expansion & Infrastructure Council—HJ 00127, On Committee agenda—Infrastructure—EEI, 02/21/08, 1:30 pm, 404–H, Favorable with 1 amendment(s) by Infrastructure (EEI), YEAS 8 NAYS 0—HJ 00192

03/05/08 HOUSE Now in Economic Expansion & Infrastructure Council—HJ 00192

04/09/08 HOUSE On Council agenda—Economic Expansion & Infrastructure Council, 04/11/08, 8:00 am, 404–H

04/11/08 HOUSE CS by Economic Expansion & Infrastructure Council, YEAS 14 NAYS 0—HJ 00567

04/15/08 HOUSE CS read 1st time on 04/16/08—HJ 00563, CS filed

04/17/08 HOUSE Now in Policy & Budget Council—HJ 00680

04/22/08 HOUSE Withdrawn from Policy & Budget Council—HJ 00779, Placed on Calendar

04/25/08 HOUSE Placed on Special Order Calendar, Read 2nd time—HJ 00941, Amendments(s) adopted—HJ 00941

04/28/08 HOUSE Read 3rd time—HJ 00956, CS passed as amended, YEAS 112 NAYS 0—HJ 00987

04/28/08 SENATE In Messages, Received, referred to Transportation, Governmental Operations, Transportation and Economic Development Appropriations—SJ 00939, Withdrawn from Transportation, Governmental Operations, Transportation and Economic Development Appropriations—SJ 00985, Substituted for CS/SBS 544—SJ 00865, Read 2nd time—SJ 00865, Read 3rd time—SJ 00865, CS passed, YEAS 36 NAYS 0—SJ 00865

05/08/08 HOUSE Ordered enrolled—HJ 01025

05/10/08 Signed by Officers and presented to Governor

05/28/08 HOUSE Approved by Governor, Chapter No 2008–71, Sec 11.16

H 169 JOINT RESOLUTION by Lopez-Canter; (Identical S 0438, Compare H 00805)

Elected Property Appraiser Required; Proposes amendment to a 1, Art VIII of State Constitution to require each county to have elected property appraiser as county officer & eliminate options for choosing property appraiser in any other manner as provided by county charter or special law approved by vote of electors of county or abolishing office of property appraiser when all duties of office prescribed by general law are transferred to another office

09/28/07 HOUSE Filed

10/12/07 HOUSE Referred to Government Efficiency & Accountability Council, Policy & Budget Council

11/09/07 HOUSE Withdrawn from Government Efficiency & Accountability Council, Policy & Budget Council, Withdrawn prior to introduction—HJ 00018

H 171 GENERAL BILL/CS by Government Efficiency & Accountability Council; Hooper; (CO-SPONSORS) Bullard; Ford; Heller; Holder; Bukill; Kiar; Kreeger; Nehr; Richardson; Robertson; Sciotti; Weatherford (Similar CSS 0976, Compare H 0027, S 0218)

Firefighter and Municipal Police Pension. Revises definitions for purposes of determining prior service credit, authorizes terms of office for boards of trustees of pension & retirement trust funds to be revised under certain circumstances, authorizes trust fund plan administrators to withhold funds for payment of insurance premiums, provides exemption from liability, requires board of trustees to perform powers subject to certain fiduciary standards & ethics provisions, etc Effective Date 07/01/2008

10/02/07 HOUSE Filed

10/12/07 HOUSE Referred to Government Efficiency & Accountability Council, Policy & Budget Council

11/28/07 HOUSE Referred to Urban & Local Affairs (GEAJ) by Government Efficiency & Accountability Council

03/04/08 HOUSE Introduced, referred to Government Efficiency & Accountability Council, Policy & Budget Council—HJ 00018, Referred to Urban & Local Affairs (GEAJ) by Government Efficiency & Accountability Council—HJ 00128

03/17/08 HOUSE On Committee agenda—Urban & Local Affairs (GEAJ), 03/19/08, 9:30 am, 306–H

03/09/08 HOUSE Favorable with amendments by Urban & Local Affairs (GEAJ), YEAS 8 NAYS 0—HJ 00686, Now in Government Efficiency & Accountability Council—HJ 00380

04/14/08 HOUSE On Council agenda—Government Efficiency & Accountability Council, 04/16/08, 9:00 am, Morris Hall

04/16/08 HOUSE CS by Government Efficiency & Accountability Council, YEAS 14 NAYS 0—HJ 00692

04/21/08 HOUSE CS read 1st time on 04/21/08—HJ 00677

04/15/08 HOUSE CS filed

05/02/08 House pending review of CS

H 173 GENERAL BILL/CS by Safety & Security Council; N. Thompson; (CO-SPONSORS) Attkisson; Carroll; Dorworth; Harrell; Hamer; Holder; Hooper; Hudson; Kelly; Kiar; Kravitz; Legg; Nehr; Patronis; Precourt; Proctor; Schein; Sciotti; Snyder; Zapata (Identical CS/SS 0384)

Controlled Substances (LCFC). Defines "cultivating" for specified purposes, prohibits owning, leasing, or possessing place, structure, trailer, or other described with knowledge that it will be used to manufacture, sell, or traffic in controlled substance, provides that possession of specified number or more of cannabis plants is prima facie evidence of intent to sell or distribute etc Effective Date 07/01/2008

10/02/07 HOUSE Filed

10/12/07 HOUSE Referred to Safety & Security Council, Policy & Budget Council

10/23/07 HOUSE Referred to Homeland Security & Public Safety (SS) by Safety & Security Council

01/30/08 HOUSE On Committee agenda—Homeland Security & Public Safety (SS), 02/06/08, 1:00 pm, Reed Hall

02/06/08 HOUSE Favorable with 1 amendment(s) by Homeland Security & Public Safety (SS), YEAS 8 NAYS 1, Now in Safety & Security Council

03/03/08 HOUSE On Council agenda—Safety & Security Council, 03/06/08, 10:00 am, Reed Hall

03/04/08 HOUSE Introduced, referred to Safety & Security Council, Policy & Budget Council—HJ 00019, Referred to Homeland Security & Public Safety (SS) by Safety & Security Council, YEAS 8 NAYS 0—HJ 00140, On Council agenda—Safety & Security Council, 03/05/08, 10:00 am, Reed Hall

03/05/08 HOUSE CS by Safety & Security Council, YEAS 15 NAYS 0—HJ 00214

(CONTINUED ON NEXT PAGE)
H 173 (CONTINUED)
03/07/08 HOUSE CS read 1st time on 03/07/08 - HJ 06212, CS filed, Now in Policy & Budget Council - HJ 00214, HJ 00218, On Council agenda-Policy & Budget Council, 03/17/08, 1:00 pm, 212-K
03/11/08 HOUSE Favorable by - Policy & Budget Council, YEAS 33 NAYS 0 - HJ 00283, Placed on Calendar - HJ 00283
04/02/08 HOUSE Placed on Special Order Calendar, Read 2nd time - HJ 00373, Read 3rd time - HJ 00392, CS passed, YEAS 115 NAYS 1 - HJ 00392
04/09/08 SENATE In Messages - SJ 06519
05/03/08 SENATE Placed on Calendar - SJ 06519
05/06/08 HOUSE Ordered enrolled - HJ 01819
05/17/08 Signed by Officers and presented to Governor
H 175 GENERAL BILL by Brise; (CO-SPONSORS) Brandenburg (Identical S 0968, Compare H 00357, S 1286, S 1314)
Use of Cellular Telephones. Prohibits use of cellular telephone while operating motor vehicle except when using hands-free device, provides exemptions, provides penalty, provides for enforcement only as secondary offense Effective Date 07/01/2008
10/03/07 HOUSE Filed
10/12/07 HOUSE Referred to Economic Expansion & Infrastructure Council, Referred to Infrastructure (EE) by Economic Expansion & Infrastructure Council
02/04/08 HOUSE Introduced, referred to Economic Expansion & Infrastructure Council (EE) by Economic Expansion & Infrastructure Council - HJ 00128
05/03/08 HOUSE Died in Committee on Infrastructure (EE)
H 177 GENERAL BILL by Richter; (CO-SPONSORS) Aubuchon; Bean; Flores; Hasner; Budin; Hukill; Neer; Nelson; Snowden; Waldman; Williams; Zapata (Identical S 0664)
Proposed Property Tax Nooses, Revises form of notice of proposed property taxes to include special assessment rates Effective Date 01/01/2009
10/04/07 HOUSE Filed
10/15/07 HOUSE Referred to Government Efficiency & Accountability Council, Policy & Budget Council
11/29/07 HOUSE Referred to State Affairs (GEA) by Government Efficiency & Accountability Council
02/13/08 HOUSE On Committee agenda - State Affairs (GEA), 02/20/08, 2:30 pm, Morriss Hall
02/09/08 HOUSE Favorable by State Affairs (GEA), YEAS 7 NAYS 0
03/04/08 HOUSE Introduced, referred to Government Efficiency & Accountability Council, Policy & Budget Council - HJ 00019, Referred to State Affairs (GEA) by Government Efficiency & Accountability Council - HJ 00128, On Committee agenda - State Affairs (GEA), 02/20/08, 2:30 pm, Morriss Hall, Favorable by State Affairs (GEA), YEAS 7 NAYS 0 - HJ 00207
03/06/08 HOUSE Now in Government Efficiency & Accountability Council - HJ 00207
03/17/08 HOUSE On Council agenda - Government Efficiency, & Accountability Council, 03/28/08, 9:45 am, Morriss Hall
03/19/08 HOUSE Favorable by Government Efficiency & Accountability Council, YEAS 10 NAYS 0 - HJ 00313
03/26/08 HOUSE Now in Policy & Budget Council - HJ 00313
03/26/08 HOUSE On Council agenda-Policy & Budget Council, 03/25/08, 1:00 pm, 212-K
03/25/08 HOUSE Favorable by - Policy & Budget Council, YEAS 29 NAYS 0 - HJ 00344, Placed on Calendar - HJ 00344
04/22/08 HOUSE Placed on Special Order Calendar, Read 2nd time - HJ 00701
04/23/08 HOUSE Read 3rd time - HJ 00724, Passed, YEAS 117 NAYS 0 - HJ 00724
04/23/08 SENATE In Messages
05/02/08 SENATE Died in Messages
H 179 GENERAL BILL by Holder; (CO-SPONSORS) Anderson; Attikkison; Friese; Kendrick; McKeel; Murzin; Patronsu; Poppell; Richter; Rolkaing; Troutman; Williams (Identical S 0452)
Placement of Vessels/Artificial Reefs, Provides legislative findings with respect to state's artificial reef program, authorizes planning & development of statewide matching grant program to secure & place U S Maritime Administration & U S Navy decommissioned vessels in specified waters as artificial reefs, provides for administration of program by FWC; provides for implementation of program subject to appropriations, provides objectives of program, etc Effective Date Upon becoming law
10/04/07 HOUSE Filed
10/12/07 HOUSE Referred to Environment & Natural Resources Council, Policy & Budget Council
10/16/07 HOUSE Referred to Conservation & State Lands (ENR) by Environment & Natural Resources Council
12/05/07 HOUSE On Committee agenda-Conservation & State Lands (ENR), 12/10/07, 8:00 am, 216-C
12/17/07 HOUSE Favorable by Conservation & State Lands (ENR), YEAS 8 NAYS 0 - Now in Environment & Natural Resources Council
03/04/08 HOUSE Introduced, referred to Environment & Natural Resources Council, Policy & Budget Council - HJ 00019, Referred to Conservation & State Lands (ENR) by Environment & Natural Resources Council - HJ 00128, On Committee agenda-Conservation & State Lands (ENR), 12/10/07, 8:00 am, 216-C, Favorable by Conservation & State Lands (ENR), YEAS 8 NAYS 0 - HJ 00138, Now in Environment & Natural Resources Council - HJ 00138
04/07/08 HOUSE On Council agenda-Environment & Natural Resources Council, 04/05/08, 8:00 am, 404-H
04/09/08 HOUSE Favorable by Environment & Natural Resources Council, YEAS 14 NAYS 0 - HJ 00458, Now in Policy & Budget Council - HJ 00458
05/02/08 HOUSE Died in - Policy & Budget Council, Link/Invest/Sum/Compare passed, refer to SB 432 (Ch 2006-100)
H 181 GENERAL BILL by Harrell; (CO-SPONSORS) Roman (Compare CS/CS/CSS 0392, S 2476, CSS 2648)
State and Local Government Spending; Requires DOS to create & manage free website disclosing certain spending by state & local governmental entities under certain contracts, provides requirements concerning content of website, provides exemption for public records that are not subject to disclosure Effective Date 07/01/2008
10/08/07 HOUSE Filed
10/12/07 HOUSE Referred to Government Efficiency & Accountability Council, Policy & Budget Council
11/07/07 HOUSE Referred to Audit & Performance (GEA) by Government Efficiency & Accountability Council
01/04/08 HOUSE On Committee agenda - Audit & Performance (GEA)
01/09/08 HOUSE Favorable with 1 amendment(s) by Audit & Performance (GEA), YEAS 6 NAYS 0, Now in Government Efficiency & Accountability Council
03/04/08 HOUSE Introduced, referred to Government Efficiency & Accountability Council, Policy & Budget Council - HJ 00019, Referred to Audit & Performance (GEA) by Government Efficiency & Accountability Council - HJ 00128, On Committee agenda - Audit & Performance (GEA), 01/09/08, 1:00 pm, 404-H, Favorable with 1 amendment(s) by Audit & Performance (GEA), YEAS 6 NAYS 0 - HJ 00138, Now in Government Efficiency & Accountability Council - HJ 00138
04/12/08 HOUSE On Council agenda - Government Efficiency & Accountability Council, 04/22/08, 10:00 am, 404-H - Temporarily deferred
05/02/08 HOUSE Died in Government Efficiency & Accountability Council
H 183 CLAIMS/LOCAL BILL by Jenne; (CO-SPONSORS) Gibbons (Similar S 0060)
Relief/Adrian Fuentes/South Broward Hospital District; Provides for relief of Adrian Fuentes, a minor, by & through his parents & natural guardians, Las Fuentes & Jose Fuentes, provides for an appropriation to compensate him for injuries & damages sustained as result of negligence of South Broward Hospital District, Dr. Memorial Hospital Primary Care Center, provides limitation on payment of attorney's fees, lobbying, costs, & other similar expenses related to the claim Claim $1,600,000 Effective Date Upon becoming law
10/10/07 HOUSE Filed
11/09/07 HOUSE Referred to Healthcare Council
03/04/08 HOUSE Introduced, referred to Healthcare Council - HJ 00019
04/15/08 HOUSE On Council agenda - Healthcare Council, 04/17/08, 8:30 am, Morriss Hall
04/17/08 HOUSE Favorable by - Healthcare Council, YEAS 17 NAYS 0 - HJ 00681
04/15/08 HOUSE Placed on Calendar - HJ 00681
05/02/08 HOUSE Died on Calendar, Link/Invest/Sum/Compare passed, refer to SB 60 (Ch 2008-265)
The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT
(This document is based on the provisions contained in the legislation as of the latest date listed below)

Prepared By The Professional Staff of the Criminal Justice Committee

BILL SB 390
INTRODUCER Senators Odellrich and Gaetz
SUBJECT Controlled Substances
DATE March 10, 2008

ANALYST STAFF DIRECTOR REFERENCE ACTION
1 Erickson Cannon CJ Pre-meeting
2. 3.
4.
5.
6.

I. Summary:

The primary purpose of the bill appears to be to address the illegal growing of marijuana through indoor grow operations. The bill provides that:

- It is a third degree felony to own, lease, or rent any place, structure, trailer, or conveyance with the knowledge that it will be used for the purpose of manufacture of a controlled substance intended for sale or distribution to another. (Current law already addresses leasing or renting such place, structure, trailer, or conveyance)
- It is a third degree felony to be in actual or constructive possession of any place, structure, or part thereof, trailer or conveyance with the knowledge that the place, structure, or part thereof, trailer or conveyance will be used for the purpose or trafficking in a controlled substance, the sale of a controlled substance, or the manufacture of a controlled substance intended for sale or distribution to another.
- Proof of the possession of 25 or more cannabis plants constitutes prima facie evidence that the cannabis is intended for sale or distribution.
- It is a first degree felony for a person to be in actual or constructive possession of a place, structure, trailer, or conveyance with the knowledge that the place, structure, trailer, or conveyance is being used to manufacture a controlled substance intended for sale or distribution to another if the person knew or should have known that a minor is present or resides in the place, structure, trailer, or conveyance.
- It is a first degree felony for a person to possess any amount of a controlled substance in close proximity to an infant or toddler.
- Offenses are ranked within the offense severity ranking chart of the Criminal Punishment Code.
In the prosecution of an offense involving the cultivation or manufacture of a controlled substance, a photograph or video recording of the manufacturing or cultivation equipment used in committing the offense may be introduced as competent evidence of the existence and use of the equipment and is admissible in the prosecution of the offense to the same extent as if the property were introduced as evidence.

After a law enforcement agency documents the manufacturing and cultivation equipment by photography or video recording, the manufacturing and cultivation equipment may be destroyed on site and left in disrepair. The law enforcement agency destroying the equipment is immune from civil liability for the destruction of the equipment. The destruction of the equipment must be recorded (as described in this analysis) and records must be maintained for 12 months.

This bill creates section 893.1352 of the Florida Statutes. This bill amends sections 893.1351 and 893.10 of the Florida Statutes.

II. Present Situation:

The Florida Department of Law Enforcement (FDLE) reported:

The indoor cultivation of domestic marijuana continues to be prevalent throughout the state. In 2006, the reported seizures of marijuana from Indoor Grow Operations outpaced the seizures from Outdoor Grow Operations. However, the reported number of plants seized this year was less than 2005.

Investigative intelligence indicates that marijuana cultivators continue to move indoors to avoid detection and to increase the quality of the marijuana being produced. The sterile and elemently controlled environments available to Indoor Grow Operations enable cultivators to utilize sophisticated techniques to increase $\Delta 9$-Tetrahydrocannabinol (THC), the primary psychoactive ingredient of marijuana. Indoor Grow Operations also allow the cultivators to artificially induce as many as four growing seasons per year as opposed to one season limited by nature in Outdoor Grow Operations.\(^1\)

The FDLE also reported:

During the year, 57 samples of seized marijuana plants were submitted by local, state, and federal law enforcement agencies in Florida to the Research Institute of Pharmaceutical Sciences at the University of Mississippi at the request of DEA. The average THC level for the Florida samples was 7.73. DEA - Miami submitted samples with the highest level (21.26) and DEA - Ft Lauderdale the lowest (1.63). In total, 1,607 samples were submitted from across the United States. The average THC level of the nationwide samples submitted was 7.54. New York submitted samples with the highest (32.26) and Missouri submitted samples with the lowest (0.05). Over the years, samples submitted from Florida's marijuana plants have had high levels of THC content.

\(^1\) Florida's Domestic Marijuana Eradication Program - 2006 Annual Report - Indoor Grow Investigations (March 2007)

Florida Department of Law Enforcement (http://www.fdle.state.fl.us/publications/mjEradication.2006_Marijuana_Annual_Report.pdf)
Local law enforcement agencies in 41 of Florida's 67 counties reported the detection and dismantling of 511 Indoor Grow Operation sites which resulted in the eradication of 37,311 marijuana plants. Some of the reported Indoor Grow operations are small and simple while others are more complex and highly organized. Indoor Grow cultivators continue to develop innovative techniques and schemes to avoid detection by law enforcement. In addition, local law enforcement reported the arrest of 492 cultivators and the seizure of 126 firearms. The prosecution of the arrested cultivators was shared by both federal and state prosecutors.2

Section 90.91, F.S., provides that in any prosecution for a crime involving the wrongful taking of property, a photograph of the property alleged to have been wrongfully taken may be deemed competent evidence of such property and may be admissible in the prosecution to the same extent as if such property were introduced as evidence. The photograph must bear a written description of the property alleged to have been wrongfully taken, the name of the owner of the property, the location where the alleged wrongful taking occurred, the name of the investigating law enforcement officer, the date the photograph was taken, and the name of the photographer. The writing must be made under oath by the investigating law enforcement officer, and the photograph must be identified by the signature of the photographer. Upon the filing of the photograph and writing with the law enforcement authority or court holding the property as evidence, the property may be returned to the owner from whom the property was taken.

Section 893.12, F.S., provides that a controlled substance which is possessed in violation of ch. 893, F.S., is contraband and is subject to seizure and confiscation. The court having jurisdiction must order the substance forfeited and destroyed. A record must be kept of the place where the controlled substance was seized, the kind and quantity of the controlled substance destroyed, and the time, place, and manner of destruction and a return under oath reporting the destruction must be made to the court by the officer who destroys the controlled substance.

Section 893.1351, F.S., provides that it is a third degree felony for a person to lease or rent any place, structure, or part thereof, trailer, or other conveyance, with the knowledge that such place, structure, trailer, or conveyance will be used for the purpose of trafficking in a controlled substance or the sale of a controlled substance.

Section 893.13(6)(a), F.S., generally provides that it is a third degree felony to possess a controlled substance in a quantity less than the threshold required for trafficking.3 This is possession without intent to sell, manufacture, etc., a controlled substance (sometimes referred to as "simple possession"). However, possession of not more than 20 grams of cannabis is a first degree misdemeanor, and possession in excess of 10 grams of any substance named or described in s. 893.03(1)(a) or (1)(b), F.S. (such as ecstasy or heroin), is a first degree felony.4

III. Effect of Proposed Changes:

The primary purpose of the bill appears to be to address the illegal growing of marijuana through indoor grow operations.

2 Id.
3 The trafficking statute, § 893.135, F.S., is only applicable to certain controlled substances, as specified in that statute.
4 This provision also applies to combinations and mixtures.
Section 1 of the bill amends s. 893.1351, F.S., to provide that it is a third degree felony to own, lease, or rent any place, structure, trailer, or conveyance with the knowledge that it will be used for the purpose of manufacture of a controlled substance intended for sale or distribution to another. (Section 893.1351, F.S., already addresses leasing or renting such place, structure, trailer, or conveyance.)

The bill also provides that it is a third degree felony to be in actual or constructive possession of any place, structure, or part thereof, trailer or any conveyance with the knowledge that the place, structure, or part thereof, trailer or conveyance will be used for the purpose of trafficking in a controlled substance, the sale of a controlled substance, or the manufacture of a controlled substance intended for sale or distribution to another.

The bill also provides that proof of the possession of 25 or more cannabis plants constitutes prima facie evidence that the cannabis is intended for sale or distribution.

Section 2 of the bill creates s. 893.1352, F.S., which provides that it is a first degree felony for a person to be in actual or constructive possession of a place, structure, trailer, or conveyance with the knowledge that the place, structure, trailer or conveyance is being used to manufacture a controlled substance intended for sale or distribution to another if the person knew or should have known that a minor is present or resides in the place, structure, trailer, or conveyance.

The bill also provides that it is a first degree felony for a person to possess any amount of a controlled substance in close proximity to an infant or toddler. "Close proximity" is defined as "the item is so close to the infant or toddler as to be within his or her reach without regard to whether the infant or toddler is likely to attempt to reach for the item."

The bill also directs the ranking of offenses under s. 893.1351, F.S. (lease or rent for the purpose of trafficking in a controlled substance), or newly created s. 893.1352, F.S. (unlawful possession of a controlled substance in the presence of a minor) in the offense severity ranking chart of the Criminal Punishment Code as follows:

- A third degree felony is ranked in Level 5
- A second degree felony is ranked in Level 7.
- A first degree felony is ranked in Level 8.

Section 3 of the bill amends s. 893.10, F.S., to provide that in the prosecution of an offense involving the "cultivation or manufacture" of a controlled substance, a photograph or video recording of the manufacturing or cultivation equipment used in committing the offense.

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5 See "Technical Deficiencies" section of this analysis. This provision could present a significant penalty increase in some cases. For example, a person who possesses 20 grams or less of cannabis commits a first degree misdemeanor. The maximum penalty for this offense is 1 year in jail. Under the bill, if this person possessed the cannabis in close proximity to an infant or toddler, this possession would be a first degree felony. The maximum penalty for a first degree felony is 30 years in state prison.

6 See s. 921.0022, F.S.

7 See "Technical Deficiencies" section of this analysis.

8 See "Technical Deficiencies" section of this analysis.
including, but not limited to, grow lights, growing trays, and chemical fertilizers, may be introduced as competent evidence of the existence and use of the equipment and is admissible in the prosecution of the offense to the same extent as if the property were introduced as evidence.

The bill also provides that after a law enforcement agency documents the manufacturing and cultivation equipment by photography or video recording, the manufacturing and cultivation equipment may be destroyed on site and left in disrepair. The law enforcement agency destroying the equipment is immune from civil liability for the destruction of the equipment. The destruction of the equipment must be recorded in the manner described in s. 893.12(1)(a), F.S., and records must be maintained for 12 months.

Section 4 provides that the effective date of the bill is July 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions

None.

B. Public Records/Open Meetings Issues

None

C. Trust Funds Restrictions:

None

V. Fiscal Impact Statement:

A. Tax/Fee Issues

None.

B. Private Sector Impact

To the extent the bill, if enacted, reduces the number of marijuana growhouse operations, the bill could benefit utility companies adversely impacted by unpaid bills for power usage by the growhouse operations, homeowners who may incur the cost of clean-up, and neighborhoods in which property values are adversely affected by grow houses.

C. Government Sector Impact

On January 17, 2008, the Criminal Justice Impact Conference determined that the bill could have a potentially significant prison bed impact.

9 While these records must be kept for 12 months it is not unusual for a case to go more than a year before it is tried.
10 This estimate is based on the provisions of the Senate Bill and HB 173 as filed. The House bill was amended and the amended House bill was estimated by the CJIC to have a potentially insignificant prison bed impact. See CS/HB 173.
VI. Technical Deficiencies:

In its present form, the bill punishes lawful conduct. Specifically, it would be a first degree felony under the bill for a person to possess a controlled substance prescribed to the person or the person’s child if the possession was in close proximity to an infant or toddler.

The bill refers to “cultivation or manufacture” of a controlled substance. The current definition of “manufacture” in s. 893.13, F.S., already covers “cultivation,” and therefore, the term “cultivation” should be deleted.

The bill ranks offenses in s. 893.1351, F.S., and newly created s. 893.1352, F.S., by means of directory language rather than by specifically ranking the offenses in the offense severity ranking chart of the Criminal Punishment Code as provided in s. 921.0022, F.S., or if not listed in the chart, by the ranking of the offenses based on felony degree as provided in s. 921.0023, F.S. The ranking of a felony offense by means of these two statutes ensures that the reader has only to consult these two statutes to determine the ranking of any felony offense. This prevents error that may result if the reader presumes these statutes alone provide for the ranking of felony offenses, but, in fact, another statute provides for the ranking. Further, the bill directs the ranking of a second degree felony offense in s. 893.1351, F.S., and newly created s. 893.1352, F.S. However, no such offense exists. Staff recommends that the offenses be specifically ranked in the offense severity ranking chart.11

VII. Related Issues:

None

VIII. Additional Information:

A Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill)

None.

B Amendments.

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

11 CS/HB 173 ranks the offenses in the offense severity ranking chart.
CHAPTER 2008-184

Council Substitute for House Bill No. 173

An act relating to controlled substances; amending s. 893.02, F.S.; defining the term "cultivating" for specified purposes; amending s. 893.1351, F.S.; prohibiting a person from owning or actually or constructively possessing a place, structure, trailer, or other described place with knowledge that the place will be used to manufacture, sell, or traffic in a controlled substance; providing that possession of a specified number or more of cannabis plants constitutes prima facie evidence of intent to sell or distribute; providing that a person with actual or constructive possession of a place, structure, trailer, or conveyance being used to manufacture a controlled substance for sale and distribution commits a felony of the first degree if a minor is present or resides in the place, structure, trailer, or conveyance; providing criminal penalties; amending s. 893.10, F.S., providing that equipment used in the manufacture of controlled substances may be photographed or video recorded and the photograph or video recording used as evidence for later use at trial; providing for the destruction of the equipment, amending s. 921.0022, F.S., ranking specified offenses in the offense severity ranking chart of the Criminal Punishment Code; amending ss. 465.016, 465.023, and 893.135, F.S.; conforming cross-references; providing an effective date.

Be It Enacted by the Legislature of the State of Florida

Section 1. Subsections (5) through (21) of section 893.02, Florida Statutes, are renumbered as subsections (6) through (22), respectively, and a new subsection (5) is added to that section to read:

893.02 Definitions.—The following words and phrases as used in this chapter shall have the following meanings, unless the context otherwise requires:

(5) "Cultivating" means the preparation of any soil or hydroponic medium for the planting of a controlled substance or the tending and care or harvesting of a controlled substance.

Section 2. Section 893.1351, Florida Statutes, is amended to read:

893.1351 Ownership, lease, rental, or possession or rent for the purpose of trafficking in or manufacturing a controlled substance.—

(1) A person may not own, lease, or rent any place, structure, or part thereof, trailer, or other conveyance, with the knowledge that the such place, structure, trailer, or conveyance will be used for the purpose of trafficking in a controlled substance, as provided in s. 893.135; for, or the sale of a controlled substance, as provided in s. 893.13; or for the manufacture of a controlled substance intended for sale or distribution to another. A person who violates this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

CODING: Words stricken are deletions, words underlined are additions.
(2) A person may not knowingly be in actual or constructive possession of any place, structure, or part thereof, trailer, or other conveyance with the knowledge that the place, structure, or part thereof, trailer, or conveyance will be used for the purpose of trafficking in a controlled substance, as provided in s. 893.135; for the sale of a controlled substance, as provided in s. 893.13; or for the manufacture of a controlled substance intended for sale or distribution to another. A person who violates this subsection commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) A person who is in actual or constructive possession of a place, structure, trailer, or conveyance with the knowledge that the place, structure, trailer, or conveyance is being used to manufacture a controlled substance intended for sale or distribution to another and who knew or should have known that a minor is present or resides in the place, structure, trailer, or conveyance commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) For the purposes of this section, proof of the possession of 25 or more cannabis plants constitutes prima facie evidence that the cannabis is intended for sale or distribution.

(2) A person who violates subsection (1) is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 3. Section 893.10, Florida Statutes, is amended to read 893.10 Burden of proof, photograph or video recording of evidence —

(1) It shall not be necessary for the state to negative any exemption or exception set forth in this chapter in any indictment, information, or other pleading or in any trial, hearing, or other proceeding under this chapter, and the burden of going forward with the evidence with respect to any such exemption or exception is shall be upon the person claiming its benefit.

(2) In the case of a person charged under s. 893.14(1) with the possession of a controlled substance, the label required under ss. 893.04(1) or s. 893.05(2) shall be admissible in evidence and shall be prima facie evidence that such substance was obtained pursuant to a valid prescription form or dispensed by a practitioner while acting in the course of his or her professional practice.

(3) In the prosecution of an offense involving the manufacture of a controlled substance, a photograph or video recording of the manufacturing equipment used in committing the offense, including, but not limited to, grow lights, growing trays, and chemical fertilizers, may be introduced as competent evidence of the existence and use of the equipment and is admissible in the prosecution of the offense to the same extent as if the property were introduced as evidence.

(4) After a law enforcement agency documents the manufacturing equipment by photography or video recording, the manufacturing equipment may be destroyed on site and left in disrepair. The law enforcement agency...