

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: January 13, 1998 Revised: \_\_\_\_\_

Subject: Controlled Substances

|    | <u>Analyst</u>  | <u>Staff Director</u> | <u>Reference</u> | <u>Action</u>    |
|----|-----------------|-----------------------|------------------|------------------|
| 1. | <u>Erickson</u> | <u>Miller</u>         | <u>CJ</u>        | <u>Favorable</u> |
| 2. | _____           | _____                 | _____            | _____            |
| 3. | _____           | _____                 | _____            | _____            |
| 4. | _____           | _____                 | _____            | _____            |
| 5. | _____           | _____                 | _____            | _____            |

**I. Summary:**

Senate Bill 480 corrects a misplaced statutory provision relating to unlawful sale or possession of a controlled substance within a specified area surrounding a child care facility. The statutory provision provides that certain enhanced penalties relating to this offense do not apply unless the owner or operator of the child care facility posts a sign identifying the facility as a child care facility.

This bill substantially amends the following section of the Florida Statutes: 893.13.

**II. Present Situation:**

Section 893.13, F.S., relates to controlled substance offenses and penalties. In 1997, the Florida Legislature amended s. 893.13, F.S., to create a new controlled substance offense for which criminal penalties attach. See ch. 97-269, L.O.F. Chapter 97-269 provides, in part, that it is unlawful for any person to sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver a controlled substance in, on, or within 1,000 feet of the real property comprising a child care facility. The criminal penalty attached to the prohibited acts depends upon the nature of the controlled substance. For example, if the defendant is convicted of selling cocaine, the crime is a first degree felony and the defendant must be sentenced to a three year mandatory minimum term of imprisonment. If the defendant is convicted of selling cannabis, the crime is a second degree felony. These penalties are similar to the same as those applied to sale of controlled substances in certain other specified areas, such as public schools. The penalties attached to the sale of a controlled substance within 1,000 feet of a child care facility are greater than the penalties that would attach, for example, if the sale occurred in a "crack house." The felony degree is not enhanced for sale of minute amounts of certain narcotic drugs, such as codeine, within 1,000 feet of a child care facility, but the defendant must be sentenced to pay a

\$500 fine and to serve 100 hours of public service in addition to any other penalty prescribed by law.

The child care facility offense provision, and the penalty provisions attached thereto, are codified at s. 893.13(1)(c)1-3., F.S. An additional provision of the new law is that the child care facility offense provision, and penalty provisions attached thereto, do not apply to a child care facility unless the owner or operator of the facility posts a sign that is not less than two square feet in size with a word legend identifying the facility as a licensed child care facility and it is posted on the property of the child care facility in a conspicuous place where the sign is reasonably visible to the public. The correct placement of this additional provision is at s. 893.13(1)(c)4., so that it directly follows the child care facility offense provision [s. 893.13(1)(c), F.S.], and penalty provisions attached thereto [s. 893.13(1)(c)2-3., F.S.]. However, the additional provision was inadvertently placed within an unrelated subsection, s. 893.13(6), F.S., which relates generally to possession of controlled substances.

### **III. Effect of Proposed Changes:**

Senate Bill 480 makes no substantive change to current law. The bill simply amends s. 893.13, F.S., relating to controlled substance offenses and penalties, to correctly place a statutory provision that requires the posting of a sign identifying a facility as a licensed child care facility for the purpose of enhanced penalties for sale or possession of controlled substances within 1,000 feet of a child care facility. The provision requiring the posting of a sign is currently misplaced; it appears within s. 893.13(6), F.S., which relates generally to possession of controlled substances.

Senate Bill 480 repeals the current provision as it appears and inserts the provision where it should correctly appear in s. 893.13(1)(c)4., directly following the child care facility offense provision, and the penalty provisions attached thereto.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.