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FISCAL IMPACT REPORT

SPONSOR Garcia, MP DATE TYPED 3/5/05 HB 1057

SHORT TITLE Clandestine Drug Laboratory Act SB _____

ANALYST Hanika-Ortiz

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	None		\$81.9	Recurring	GF

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the District Attorney (AODA)

Department of Public Safety (DPS)

Department of Finance and Administration (DFA)

New Mexico Department of Environment (NMED)

New Mexico Corrections Department (NMCD)

Department of the Public Defender (PDD)

Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of Bill

HB 1057 enacts the "Clandestine Drug Laboratory Act" and requires DPS to provide notice to a landlord, owner, occupant or manager of real property, mobile home or recreational vehicle parks, and mobile homes or recreational vehicles that a property has been used as a clandestine drug laboratory, and also provides notice to NMED, the local fire department and to the local county health office. The property owner must remediate the property to comply with the NMED standards. The property owner may attempt to recover damages from the person who operated a clandestine drug laboratory on the property. The bill requires that all remediation plans be approved by NMED.

Section 1

- Proposes the “Clandestine Drug Laboratory Act”.

Section 2

- Defines “board,” “clandestine drug laboratory,” “controlled substance,” “remediation” and “residual contamination.”

Section 3

- Describes law enforcement procedures upon discovery of a clandestine drug laboratory; including seizure of laboratory components, removal of persons and the attaching of a notice of contamination.

Section 4

- Describes the notice of contamination, including a statement that a fourth degree felony is committed for violation of the provisions and a misdemeanor is committed for disturbing the posted notice.

Section 5

- Provides for remediation by the property owner of residual contamination at a clandestine drug laboratory. The NMED must determine that a property has been remediated. The property will be condemned if the property owner refuse to remediate the property within the required time limit.

Section 6

- An owner will not sell, lease, rent, loan, assign or exchange the property until remediation is completed unless the owner provides written notice that is received by the interested party that the property is contaminated. A civil penalty of \$1 thousand will be imposed for any harm resulting from an owner’s failure to comply; any contract may be voided.

Section 7

- A landlord may remove or dispose of a mobile home or RV in a space-rental park that was used as a clandestine drug lab if the landlord requests the lienholder and owner of the unit to remove it within 30 days and the vehicle is not so removed. An owner of the property may dispose of the property in lieu of remediation and cleanup.

Section 8

- A person operating a drug lab shall pay restitution to the owner of the property for all costs and fees that the owner incurred to remediate or dispose of the property.

Section 9

- Anyone entering the property before the residual contamination is removed is guilty of a fourth degree felony. Anyone disturbing the notice is guilty of a misdemeanor.

Section 10

- Amends the Hazardous Waste Act to include an emergency incident involving chemicals related to illegal drug manufacturing within the definition of a “hazardous substance incident.”

Section 11

- The Environmental Improvement Board will adopt rules concerning remediation standards for hazardous substance incidents.

Section 12

- The effective date of the Act is July 1, 2005.

Significant Issues

HB1057 establishes a process for ensuring that people are not exposed to structures or facilities used for illegal drug manufacturing, and that the facilities are cleaned up or condemned before they are reoccupied. HB 1057 places responsibility of clean up on the property owner and restricts use of property until the clean up is completed and approved by NMED.

The majority of clandestine drug labs manufacture methamphetamine. These labs are set up in motels, houses, apartments, storage units, and vehicles. Nearly 400 illegal drug lab seizures occurred in New Mexico between 2001 and 2004. Hazardous chemicals are used that can contaminate structural materials, furnishings, wastewater systems and soils. Local health jurisdictions usually assess properties to determine the degree and extent of contamination of methamphetamine and chemical residues and biohazards such as hypodermic needles, feces, and blood. Proper decontamination is necessary to reduce the public health risks of injuries and hazardous exposures associated with clandestine drug labs. The children often found in these structures (63 in 2003 alone) are exposed to the hazards posed by the manufacturing operations and the contamination left behind.

PERFORMANCE IMPLICATIONS

NMED currently does not approve work plans for drug lab cleanups, or make determinations of the adequacy of cleanup. The technical approach to cleanup and the timeline are established on a case-by-case basis.

HB1057 requires law enforcement officials to remove and seize hazardous materials encountered in illegal drug labs. HB1057 should recognize that only qualified and trained individuals should approach illegal drug laboratories. In response to HJM 77 (passed in 2004 by the 46th Legislature), a multi-disciplinary best practices protocol was developed to ensure that law enforcement personnel, social workers, and others who might be the first to discover illegal drug laboratories know how to respond safely.

The local fire departments and the local county health offices will have to enact policies and procedures when notified that a clandestine drug laboratory has been discovered.

FISCAL IMPLICATIONS

The bill does not contain an appropriation for implementing the notification procedures. The requirements of notification include a determination and verification to the owner/landlord or manager of the area where the clandestine drug laboratory existed. Additional resources will be expended to accomplish the goals of the notification procedure. In addition, the creation of two new crimes for violation of the Clandestine Drug Laboratory Act would necessarily implicate additional resources for prosecution of these matters.

The NMED anticipate the cost for additional staff, travel, telecommunications equipment, office supplies, sampling equipment and analysis, field supplies and protection is \$81.850 annually.

There will be a significant positive impact on public health and safety; and additional cost savings to public and private health care agencies through the early identification of chemical exposure and the proper drug lab waste product management.

ADMINISTRATIVE IMPLICATIONS

HB 1057 will place additional responsibility on the DPS and NMED to ensure compliance under the Act.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Conflicts with SB 668, Stringency of Hazardous Waste Act Rules

TECHNICAL ISSUES

The DPS has the following comments:

- In Section 2 the “environmental improvement board” and in Section 5 “department of environment” are both charged with adopting standards for remediation. The bill is not clear if these terms are the same.
- Section 6 provides that until remediation is completed the owner shall not sell, lease, rent, assign or exchange the residually contaminated property unless the owner provides notice that a controlled substance was manufactured on the property and that the property was contaminated and receives notice that the notice was received by the other party. This section may create a potential loop hole allowing a property owner who does not wish to remediate to pass the property on to another party.
- The bill is unclear as to the time limits for remediation, the levels of remediation for motel rooms and vehicles as opposed to dwellings, mobile homes and recreational vehicles. Private remediation companies, oversight of these companies and follow up on any certification requirements is not addressed.
- Adding an illegal drug manufacturing operation to the definition of a hazardous substance incident under the Hazardous Waste Act would cause such incident to fall under the Hazardous Material Response Act, requiring the New Mexico State Police to coordinate and assign an Emergency Response Officer to all clandestine lab scenes.
- The roles for the local fire department and the local county health office has not been identified in the bill.
- The bill is unclear what liability and follow up exists for the officer who fulfills the requirements under Section 4.
- The bill is unclear which agency under “local government agency” will condemn a prop-

erty, the current abatement or property code enforcement ordinances that will be impacted and which legal department would track and file for property forfeiture.

The PDD has the following comments:

- The reason that violating a notice of removal is a 4th degree felony is not clear. For an “unauthorized person” to enter the property once the notice is posted would be a felony offense. There are many reasons why an innocent owner may need to enter his/her property prior to the time the residue from a drug manufacturing process is removed. Who would be “authorized” (and who would “authorize” such persons) is not clear from the bill.
- There is virtually no chance that a landlord would ever actually be able to recover cleanup costs from an offender.
- There is no limitation on the amount or nature of the remediation required by the board, or on the costs thereof.

Under Section 7, thirty days is allowed before a contaminated vehicle is removed. The public may be exposed to a significant health hazard during that time depending on the location.

OTHER SUBSTANTIVE ISSUES

The AOC notes the activities of a law enforcement officer upon discovery of a lab could have an impact upon legitimate business activities or habitation. There may need to be procedures set up which would permit a business or inhabitants to limit the scope of or challenge the scope of a contamination determination so that business or living as usual could continue. Also, even if the scope of a contamination determination legitimately encompasses a business or living space, there may need to be procedures to challenge a decision by the NMED as to whether remediation has been completed.

ALTERNATIVES

The DOH to lead as opposed to the NMED in implementing the provisions of the Act.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

A serious environmental health hazard would continue to exist in New Mexico. Owners of subject properties will not be held accountable for the activities at their properties. Illegal drug laboratories may not be cleaned up in a manner protective of human health and the environment. Exposure to chemicals by adults and children who may reside or utilize property or vehicles contaminated by residue from methamphetamine laboratories may continue to occur.

AMENDMENTS

DPS suggests Page 2, Section 3, line 19 to replace “a law enforcement officer” with “an agency”.

NMED suggests Page 4, Section 4, Subsection G, line 9 after “until...” insert “...the department of environment has determined that...”.

ANA/rs