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FISCAL IMPACT REPORT

SPONSOR Taylor **ORIGINAL DATE** 2/2/06 **LAST UPDATED** 2/11/06 **HB** _____
SHORT TITLE Methamphetamine Related Property Notices **SB** 589/aSPAC/aSJC
ANALYST McSherry

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY06	FY07	FY08		
	Minimal		Recurring	NM County Clerks funds
	See Narrative			

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General (AG)

New Mexico Environment Department (NMED)

Regulation and Licensing Department (RLD)

“State Drug Czar,” Department of Public Safety (DPS)

SUMMARY

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment to Senate Bill 589, “Methamphetamine Related Property Notices,” makes the following changes:

- Provides that the requirement for law enforcement to file a "notice of methamphetamine lab" to be required only upon “certification by the department that the premises are contaminated.”
- Clarifies the form completion required by officers at the county clerk’s office.
- Provide that property owners may request that notice of remediated property be “expunged” from the registry of notices upon certification by the hazardous waste bureau of the department of environment.
- Removes the proposed requirement that “The county clerk shall record the affidavit in a manner that ensures its disclosure in the ordinary course of a title search of the subject property.”

Synopsis of SPAC Amendment

The Senate Public Affairs Committee amendment to Senate Bill 589, “Methamphetamine Property Notices,” is a technical change which clarifies the procedure proposed in the original bill for reporting real property use for manufacturing methamphetamines.

The amendment adds the word “that” to describe the required law enforcement actions: “A law enforcement agency shall complete the legal description or description of property sufficient to identify **that** portion of the notice to the extent possible.”

Synopsis of Original Bill

Senate Bill 589 proposes to enact a section of law which would require local or state law enforcement to report real property being used for manufacturing methamphetamines to the county clerk. Law enforcement would be required to file a form with the county clerk to document the location of manufacture, date of discovery, property owner, location on property that the manufacturing was taking place, and name and title of person giving notice (the law enforcement official).

County clerks would be required to file the methamphetamine manufacturing property notices so that a title search would disclose the filing. The proposed statute includes a recommended form. The clerk would also be required to maintain a registry of notices available to the public for free and publish the registry online if a site is available.

The bill defines “remediation,” as cleanup, removal, treatment or containment of substances, chemical or items used in manufacturing methamphetamine compliant with standards to be set by the environmental improvement board.

The bill provides for a “person with an interest in the property” to file an affidavit when remediation of an identified “real property methamphetamine manufacture site” has been completed. The affidavit would only be filed if the person had gained certification from the environmental improvement board. A fee would be associated with the filing of an affidavit.

FISCAL IMPLICATIONS

A fee for filing an affidavit is provided for as in Section 14-8-12. As the document required is not listed in subsection A, the filing would be subject to section B:

“the recording fee for which is not fixed in Subsection A of this section, and when the instrument is not photocopied, the recording fee shall be one dollar seventy-five cents (\$1.75) for the first seven hundred words or less and twenty-five cents (\$.25) for each additional hundred words or fraction thereof., however the bill does not specify what fund the fees would be collected in.”

In 2005 there were 76 methamphetamine labs discovered by law enforcement, in 2004 there were 129 and in 2003 there were 202. Assuming a continuing trend towards less lab discoveries, county clerk revenues from the provisions of this bill would be minimal: \$87.5-130.0.

SIGNIFICANT ISSUES

The bill only requires law enforcement to make a filing of notice about property used for methamphetamine production, but does not require a property seller, or any other party to make a filing if they have knowledge of methamphetamine production.

The Department of Public Safety reports that changes proposed by this bill could pose significant issues for law enforcement agencies arising out of potential mistakes in determining the proper property owner's addresses and legal descriptions. DPS asserts that any mistakes made in this notification could lead to an action against law enforcement and perhaps that county clerk for slander of title actions.

DPS suggests that the bill be amended to provide a provision for immunity from slander of title suits for law enforcement.

The bill creates a mechanism for the public to find out if property was ever found by law enforcement to be a methamphetamine lab.

Remediation is not made the responsibility of any particular party through this bill; the property would remain identified as a site where methamphetamines were manufactured until an affidavit and certification were delivered to the county clerk.

According to NMED, SB589 addresses a major public health threat resulting from operation of methamphetamine labs. NMED asserts that illegal meth. labs found in residential properties become highly contaminated with explosive and toxic chemicals. NMED further asserts that after law enforcement agencies "bust" these labs and remove the chemicals used to manufacture methamphetamine, significant contamination remains that pose a health risk to occupants and neighbors.

SB589 establishes a process that allows information to be available to people who would check the proposed archived. These people could avoid being unwittingly exposed to contamination left behind after a methamphetamine lab bust.

SB589 poses two significant issues of potential concern to NMED:

1. The Environmental Improvement Board EIB would be required to promulgate rules establishing remediation standards. For the purposes of the bill, remediation means "the cleanup, removal, treatment or containment of substances, chemicals or items used in manufacturing methamphetamine or the byproducts or degradates of manufacturing methamphetamine to a level that makes the property safe for human habitation." Regulations already exist concerning determinations of when source chemicals and contaminated equipment, materials and environmental media removed from a property need to be handled as hazardous waste. Any rule adopted under SB589 must not conflict with these existing rules, and must address indoor air concentrations of hazardous chemicals.
2. Under SB589, persons conducting remediation will have to certify that EIB's standards are met. There are no federal or state programs for licensing/certifying/training methamphetamine lab remediation contractors, nor are there penalties in SB589 for such persons who certify falsely.

PERFORMANCE IMPLICATIONS

Additional responsibilities for both the county clerk and law enforcement could result in decreased performance for other responsibilities.

ADMINISTRATIVE IMPLICATIONS

Additional workload would be realized by local law enforcement, the state police and the county clerks as a result of this bill. It is not clear how substantial the workload increase would be.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

There would not be a mechanism to determine if a property had been subject to a methamphetamine “bust.”

POSSIBLE QUESTIONS

1. Would a fee be required for an Environmental Approval Board inspection and certification? If so, what is the cost of this inspection?
2. If the owner of a property which had been the site of a discovered methamphetamine lab were leasing the property at the time of the discovery, would the owner be notified of the law enforcement filing?

EM/yr:mt