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FISCAL IMPACT REPORT

SPONSOR Ogle DATE TYPED 2/14/04 HB 390/aHBIC

SHORT TITLE Clandestine Drug Laboratory Act SB _____

ANALYST Gilbert

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY04	FY05	FY04	FY05		
		Indeterminate	Indeterminate	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Duplicates: SB 389

Relates to: HJM 61 – Methamphetamine Lab Closure Protocol

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Environment Department (NMED)

New Mexico Corrections Department (NMCD)

Administrative Office of the Courts (AOC)

Attorney General’s Office (AGO)

SUMMARY

Synopsis of HBIC Amendment

The House Business and Industry Committee (HBIC) amendment to House Bill 390 makes several technical corrections and changes responsibility for licensing “*drug laboratory site remediation firms*” from the Public Safety Department to the Environment Department.

The HBIC amendment also adds a new subsection D to section 3 which pertains to clandestine drug laboratories, as outlined below:

D. When one hundred twenty days have passed following seizure of a clandestine drug laboratory, and remediation efforts have not yet commenced, the real property shall revert to the person who holds the mortgage on the real property. The mortgage holder shall assume responsibility to remediate the real property. If the mortgage holder refuses ownership of the real property, then the appropriate local

government agency shall condemn the real property. When remediation efforts begin before one hundred twenty days have passed following seizure of a clandestine drug laboratory, but those efforts are not completed before two hundred forty days have passed following the seizure, the real property shall revert to the person who holds the mortgage on the real property. The mortgage holder shall assume responsibility to remediate the real property. If the mortgage holder refuses ownership of the real property, then the appropriate local government agency shall condemn the real property.

Synopsis of Original Bill

House Bill 390 establishes the Clandestine Drug Laboratory Act. The bill requires real property owners of clandestine drug laboratory sites to retain registered drug laboratory site remediation firms to decontaminate such properties. Until remediation is complete, no one may use, enter, occupy, rent or sell contaminated properties. Future buyers or renters must be notified that such properties were used as clandestine drug laboratory sites.

In addition, HB 390 makes it a crime to violate an order or notice of removal or to knowingly disturb the posted notice of removal required by this bill. After law enforcement notifies owners regarding the presence of contamination, by placing a notice of removal on the property or mailing the same, any violation of the removal process is a fourth degree felony. Disturbing the notice of removal is a misdemeanor.

Significant Issues

HB 390 does not specify or reference cleanup standards. Most compounds used in methamphetamine manufacture do not have established cleanup levels. The City of Albuquerque has just recently formed a task force to develop standards. Licensure requirements of remediation firms, or how those requirements would be determined, are also not specified.

FISCAL IMPLICATIONS

According to the New Mexico Corrections Department (NMCD), if this bill increases incarcerations, probations, or paroles, it could impact the general fund as follows:

For example, the contract/private prison annual costs of incarcerating an inmate, based upon Fiscal Year 2003 actual expenditures, is \$20,720 per year for males. The cost per client to house a female inmate at a privately operated facility is \$26,313 per year. Because state owned prisons are essentially at capacity, any net increase in inmate population will be housed at a contract/private facility.

The cost per client in probation and parole for a standard supervision program is \$1,452 per year. The cost per client in intensive supervision programs is \$2,852 per year. The cost per client in department-operated community corrections programs is \$4,371 per year. The cost per client in privately-operated community corrections programs is \$9,151 per year. The cost per year for male and female residential community corrections programs is \$20,725.

ADMINISTRATIVE IMPLICATIONS

According to the Administrative Office of the Courts (AOC), this bill would result in increased workload from added judicial time needed to dispose of these types of cases in the manner provided under the law. There will be a minimal administrative cost for statewide update, distribution, and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws, and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

Illegal drug laboratories are a growing problem in New Mexico. According to the NMCD, since this bill defines a new crime, it is uncertain how many persons might be convicted. As such, it could have both a performance and a fiscal impact to the prison system.

TECHNICAL ISSUES

New Mexico Environment Department (NMED) stated that HB390 should be amended to ensure that the NMED determines whether or not sites have been sufficiently remediated.

According to the Attorney General's Office (AGO), the criminal provisions of this bill do not appear to create double jeopardy problems inasmuch as they do no purport to take the property of any person who may be otherwise criminally prosecuted in connection with the manufacture of controlled substances.

The AGO also noted that pursuant to a recent Court of Appeals decision, if any statutory sections amended by this bill are also amended by another bill or bills, the bill last signed by the Governor may be the only one that will be considered a valid law. See *State v. Smith*, Ct.App. No.s 24,253, 24,254 and 24,258 (filed 1/12/04), pet. for cert. pending.

OTHER SUBSTANTIVE ISSUES

The Administrative Office of the Courts (AOC) outlined the following concerns:

As written, the bill only requires remediation of real property, mobile homes, or recreational vehicles. If a drug lab discovered in a car or truck, this bill would not apply and remediation would not be required. Should the language of the bill be broader or should motor vehicles be added to the bill?

When a mobile home or recreational vehicle requires remediation, the landlord notifies the lien holder and the owner of record of the property that the unit is to be removed within 30 days. If the unit is not removed in 30 days, the landlord may remove or demolish the unit and dispose of it as junk. There is no clean-up requirement in this situation. It appears that hazardous waste could be disposed of without remediation. Should remediation be required in these situations before mobile homes or recreational vehicles can be disposed as junk?