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FISCAL IMPACT REPORT

ORIGINAL DATE 2/15/2007
 LAST UPDATED 3/14/2007 HB CS/354/aSJC

SPONSOR HJC

SHORT TITLE Clandestine Drug Laboratory Act SB _____

ANALYST Schuss

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY07	FY08	FY09		
	Unknown	Unknown	Recurring	Hazardous Waste Emergency Fund

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Department of Environment (DOE)
 Department of Public Safety (DPS)
 Department of Health (DOH)

SUMMARY

Synopsis of SJC Amendment

The amendment proposed by the Senate Judiciary Committee replaces references to *a controlled substance* with *methamphetamine*.

The amendment removes the definition of a controlled substance and adds a new subsection to read:

“methamphetamine” has the same meaning as prescribed in Section 30-31-7 NMSA 1978 and includes any of the precursor chemicals, regulated chemicals, other substances or equipment used in the unlawful manufacture of methamphetamine and any of its derivatives.

The amendment also changes language in Section 8 that refers to the remediation by a county or municipality. The words *shall* are replaced with *may*.

The amendment adds some additional clarifying language to Section 9 which refers to restitution.

Synopsis of Original Bill

The House Judiciary Committee (HJC) Substitute for HB 354 enacts the “Clandestine Drug Laboratory Act” and contains the following provisions:

Section 2: Defines the following terms as used within the act: “clandestine drug laboratory,” “controlled substance,” “law enforcement agency,” “manufacture,” “mobile home,” “recreational vehicle,” “remediation” and “vehicle.”

Section 3: Provides procedures a law enforcement agency must take upon discovery or verification of information received about the location of a clandestine drug laboratory.

Section 4: Requires a law enforcement agency to deliver to an owner, landlord, manager or occupant of a clandestine drug laboratory who is present at the time of seizure a copy of a notice of contamination. If the owner is not personally provided with a copy of the notice, the law enforcement agency must send a notice of contamination by certified mail, return receipt requested, to the owner within seven business days after seizure. The agency must deliver to the department of environment a copy of a notice of contamination within seven business days after seizure.

Section 5: Provides for the contents of the required notice of contamination, including:

- a statement that it is a misdemeanor to knowingly and intentionally disturb the notice of contamination posted at the clandestine drug laboratory;
- a statement that the owner of the property shall remediate the contaminated portion of the clandestine drug laboratory in compliance with department of environment rules;
- a statement that failure of the owner to remediate the contaminated portion of the clandestine drug laboratory in compliance with department of environment rules may result in a fine of up to five thousand dollars (\$5,000); and
- a statement that until remediation is complete, selling, leasing, renting, loaning, assigning, exchanging or otherwise transferring the clandestine drug laboratory without providing notice of its existence as required by Section 11 of the Clandestine Drug Laboratory Act shall void the sale, lease, rental, loan, assignment, exchange or other transfer and may result in a fine of up to one thousand dollars (\$1,000).

Section 6: Requires the Department of Environment to publish a list of laboratories on its website, and to promulgate rules for assessment and remediation of laboratory properties.

Section 7: Provides that the owner of the laboratory is responsible for remediation of the property and sets out the actions that the Department of Environment must take upon completion of remediation.

Section 8: Provides for remediation by a county or municipality of the property in which the laboratory is contained when the owner refuses or fails to remediate. Provides the county or municipality seek a court order requiring the owner to remediate. If the owner cannot be located within 30 days after the issuance of a notice of condemnation, the county or municipality is required to proceed with remediation. If the owner refuses or fails to pay the costs of remediation, the county or municipality may file a lien against the property for the costs and bring legal action against the owner for those remediation costs. The county or

municipality may apply for a loan from the NM Finance Authority to cover the costs of remediation.

Section 9: Provides that a court may require restitution to a public entity by a person convicted of a crime involving a clandestine drug laboratory to cover the reasonable costs of the action taken. A court may also require restitution to a property owner who incurs remediation costs because of the crime.

Section 10: Sets out procedures to be followed in the event that a mobile home or RV in a space-rental or space-purchase park was used as a laboratory.

Section 11: Prohibits an owner from selling, leasing, renting, loaning, assigning, exchanging or otherwise transferring the laboratory property until remediation is completed, unless specific actions occur.

Section 12: Provides for the following discretionary civil penalties:

Violation of Section 7: \$5,000 civil penalty

Violation of Section 11: \$1,000 civil penalty

HB 354 also provides for a public hearing upon the written request of an owner named in an order issued pursuant to this section. The hearing officer is required to make and preserve a record of the proceedings and forward recommendations based on the record to the secretary of environment, who shall make a final decision. The secretary may issue subpoenas for the attendance and testimony of witnesses and the production of documents, and may promulgate rules for discovery procedures. The bill provides for the appeal to the district court of a final decision of the secretary.

Section 13: Provides for the following criminal penalties:

Knowing and intentional violation of a notice of contamination: misdemeanor

Knowing and intentional disturbance of a notice of contamination: misdemeanor

Section 14: Following the effective date of the promulgation of enforceable rules by the department pursuant to the act, the act will preempt county and municipal laws, ordinances and resolutions regarding the subject matter of the act.

FISCAL IMPLICATIONS

HB 354 provides for civil penalties that are to be credited to the hazardous waste emergency fund.

AOC notes that 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, requested orders, civil action, appeals from final administrative decisions 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.

DPS states that as first responders, law enforcement would require additional training and equipment to safely deal with potentially hazardous labs and lab sites. New laws with criminal sanctions (even if those penalties are reduced from felonies to misdemeanors) will impact the

courts, public defenders, jails and prisons.

DOE has included the following impacts in their analysis:

DOE would need to develop CDL property remediation standards, requiring DOE resources to research and develop new standards. This will require significant effort over several months to draft regulations and obtain buy-in from other state and local agencies. It is estimated that a half-time employee might be needed to accomplish the one-time effort. DOE should be able to accomplish this with existing resources.

DOE would need to make determinations concerning the necessity of remediation and then review remediation reports of CDL properties to ensure adequate remediation occurred. Fewer than 100 CDLs were shut down last year in New Mexico. That continued a 5-year trend of decreasing numbers on such shutdowns each year. Law enforcement agencies and DPS expect this trend to continue. Therefore, report review will be an ongoing effort that DOE should be able to accomplish with existing resources.

SIGNIFICANT ISSUES

AOC notes the following issues:

- 1) Section 4: the substitute requires the law enforcement agency discovering the laboratory to provide notice within specified time frames. The original HB 354 required the county health department, upon receiving notice of the laboratory from a law enforcement agency, to provide notice.
- 2) The substitute bill removes the following sections contained in the original bill:
 - Section 6:** Requires a county health department to record an affidavit of disclosure to potential transferees of the contaminated property with the county clerk within 48 hours of the discovery or verification of a laboratory.. Also provides for the manner in which a county clerk must record the affidavit.
 - Section 7:** Requires a law enforcement agency to forward a certificate of title to the Tax and Revenue Department when a vehicle is part of the laboratory. The department is then required to include on the certificate of title the term “hazardous substance contaminated vehicle.”
 - Section 8:** Requires the state drug czar or the czar’s successor, upon notification of the existence of a clandestine drug laboratory, to notify the department of environment of the existence of the laboratory.
- 3) Section 8: requires the county or municipality to remediate or seek a court order requiring the owner to remediate. The original HB 354 provided for condemnation and remediation. The substitute calls for the county or municipality to file a lien against the laboratory for the costs related to remediation and to bring legal action against the owner for remediation costs.

- 4) Section 12: the original bill imposed mandatory civil penalties, while the substitute's civil penalties are discretionary. The substitute also provides for appeal of a final decision of the Secretary to the District Court.
- 5) Section 13: the substitute bill changes the criminal penalty for a *knowing and intentional* violation of a notice of contamination to a misdemeanor from a fourth degree felony. The substitute also requires knowing *and* intentional disturbance of a notice of contamination.

DOH states that HB 354 relates to the manufacture and storage of methamphetamine (MA). MA is widely available throughout the state. Numbers of small clandestine laboratories rapidly increased from 2001 to 2004. Effective law enforcement initiatives significantly decreased the number of these local labs.

Standards for remediation of lab sites vary from state to state, and the responsibility often falls on property owners. In Albuquerque, property owners are legally responsible for remediation. Similar laws do not exist in other areas of the state. Removal of precursors and products from sites can cost \$5,000 - \$10,000 per site. HB 354 would make the manufacturer financially responsible.

TECHNICAL ISSUES

According to DPS, communities with minimal resources would be tasked with clean up and taking legal action against a property owner who is unwilling or unable to affect remediation. The average 1,200 square-foot home costs approximately \$6,700 to decontaminate. This does not include the cost of assessing sewer or septic system contamination or dealing with lab site backyards and other dumpsites. Recouping cleanups cost from convicted offenders under Section 9 of the proposed Act may not be feasible.

HB354 does provide for a loan through the New Mexico Finance Authority to cover the costs of remediation if the county or municipality does remediate the property.

OTHER SUBSTANTIVE ISSUES

DPS reports that dealing with clandestine drug labs, especially methamphetamine labs, requires a high level of technical expertise. Police who routinely enter private property should be trained to recognize indicators of clandestine labs so enforcement can be initiated. Early recognition clandestine labs and response to the problem is critical to preventing them from becoming entrenched, especially in small communities not currently experiencing a high number of labs.

Responders must understand illicit drug chemistry; how to neutralize the risks of explosions, fires, chemical burns, and toxic fumes. In addition, they should be trained in how to handle and secure hazardous materials and equipment used in the clandestine laboratory. Along with environmental protection officials, law enforcement must collaborate with fire officials, hazardous material experts, chemists, public health officials, and social services.