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FISCAL IMPACT REPORT

ORIGINAL DATE 3/22/07

SPONSOR HJC LAST UPDATED _____ HB 3/HJCS

SHORT TITLE Clandestine Drug Laboratory Act SB _____

ANALYST Peery-Galon/Weber

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

Responses Received From*

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

*Responses received for requests for analysis from the following similar bills introduced in the Forty-eighth Legislature, First Session: House Judiciary Committee Substitute for House Bill 354 and Senate Public Affairs Committee Substitute for Senate Bill 338.

SUMMARY

Synopsis of Bill

The House Judiciary Committee Substitute for House Bill 3 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, law enforcement agency, manufacture, methamphetamine, mobile home, recreational vehicle, remediation and vehicle.

Section 3: Provides procedures upon discovery of a clandestine drug laboratory to be taken by a law enforcement agency. In addition, Section 3B requires that a hearing be held within seven days during which a person affected by the seizure may challenge the probable cause for the action. The hearing officer is chosen by the law enforcement agency and a decision must be

rendered at the immediate conclusion of the hearing. The decision may be appealed to the appropriate district court.

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

Section 5: The notice of contamination required by the Clandestine Drug Laboratory Act is to contain:

- the word "WARNING" in large bold type at the top and bottom of the notice;
- a statement that a clandestine drug laboratory was seized;
- the date of seizure;
- the address or location of the clandestine drug laboratory;
- the name of the law enforcement agency that seized the clandestine drug laboratory and that agency's telephone number;
- a statement that hazardous substance, toxic chemicals or other residual contamination from operation of the clandestine drug laboratory may still be present;
- a statement that it is a misdemeanor for a person other than the owner, the owner's agency, a lessee or renter or a transferee or assignee of the owner to enter, occupy or use the clandestine drug laboratory until remediation of the clandestine drug laboratory has taken place in accordance with the Department of Environment rules;
- a statement that it is a misdemeanor to knowingly and intentionally disturb the notice of contamination;
- a statement that the owner of the property shall remediate the contaminated portion of the clandestine drug laboratory in compliance with the Department of Environment rules;
- a statement that failure of the owner to remediate the contaminated portion of the clandestine drug laboratory may result in a fine up to \$5,000;
- contact information for the Department of Environment; 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 will void the sale, lease, rental, loan, assignment, exchange or other transfer and may result in a fine of up to \$5,000.
- a statement that a person affected is entitled to a hearing as described in Section 3B.

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 clandestine drug laboratory is contained when the owner refuses or fails to remediate. If the owner cannot be located within 30 days of the issuance of the notice of contamination, the

county or municipality is 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 New Mexico 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. Also, the court may 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 recreational vehicle in a space-rental or space-purchase park is used as a clandestine drug laboratory.

Section 11: Prohibits an owner from selling, leasing, renting, loaning, assigning, exchanging or otherwise transferring the clandestine drug laboratory property unless the owner provides written notice, with a copy to the Department of Environment, of the existence of the laboratory and received a written acknowledgment, and provides a copy to the Department of Environment, that the notice was received to the purchaser, lessee, renter, borrower, assignee, exchange partner or other transferee.

Section 12: Establishes civil penalties for violation of Section 7 of up to \$5,000 and for violation of Section 11 of up to \$1,000. Also, it establishes procedures for a public hearing for an owner named in an order issued pursuant to this section.

Section 13: Establishes criminal penalties of a misdemeanor for knowingly and intentionally violating a notice of contamination and for knowingly and intentionally disturbing a notice of contamination.

Section 14: Following the effective date of the promulgation of enforceable rules by the Department of Environment pursuant to the Act, no county or municipality, including home-rule municipality, is to adopt or enforce an ordinance or resolution regarding the subject matter of the Clandestine Drug Laboratory Act.

FISCAL IMPLICATIONS

The proposed legislation 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.

SIGNIFICANT ISSUES

DOH states that the proposed legislation relates to the manufacture and storage of methamphetamine. Methamphetamine 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 to \$10,000 per site. The proposed legislation would make the manufacturer financially responsible.

ADMINISTRATIVE IMPLICATIONS

DOE reports it would need to develop clandestine drug laboratory 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 states it would need to make determinations concerning the necessity of remediation and then review remediation reports of clandestine drug laboratory properties to ensure adequate remediation occurred. Fewer than 100 clandestine drug laboratories 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.

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.

The proposed legislation 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.

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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.

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