



Senate Fiscal Agency
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BILL ANALYSIS

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Senate Bill 1112 (as enrolled)

Senate Bills 1115 and 1119 (as enrolled)

House Bills 5798, 5841, and 5845 (as enrolled)

Sponsor: Senator Patricia L. Birkholz (S.B. 1112)

Senator Tom George (S.B. 1115)

Senator Gerald Van Woerkom (S.B. 1119)

Representative Tonya Schuitmaker (H.B. 5798 & 5841)

Representative Tim Moore (H.B. 5845)

Senate Committee: Health Policy (S.B. 1112 & H.B. 5798 & 5845)

Judiciary (S.B. 1115 & 1119 & H.B. 5841)

House Committee: Health Policy (S.B. 1112 & H.B. 5798)

Judiciary (S.B. 1115 & 1119 & H.B. 5841)

Natural Resources, Great Lakes, Land Use, and Environment (H.B. 5845)

PUBLIC ACT 258 of 2006

PUBLIC ACTS 255 & 257 of 2006

PUBLIC ACTS 260, 262 & 265 of 2006

Date Completed: 8-16-06

RATIONALE

Legislation enacted in recent years has taken various approaches to combat the use and production of methamphetamine ("meth"), which has been a growing problem in the State—particularly in southwestern Michigan—since the 1990s. The legislation includes measures that address the contamination created by meth labs, which can pollute dwellings, furnishings, soil, and water supplies. Reportedly, for every pound of methamphetamine, meth labs produce five to six pounds of toxic waste, which requires specialized cleanup and disposal procedures. Although meth labs apparently have been found in motel rooms, barns, recreational vehicles, and yards, the vast majority of meth "cookers" use rental property to manufacture meth, according to the Department of Community Health (DCH). This can be problematic for landlords, realtors, and prospective tenants or home-buyers, who do not always know whether property has been contaminated or properly cleaned. In addition, the presence of meth labs evidently can be a disincentive to operate, or invest in, rental property in some urban areas.

Amendments to the Housing Law enacted in 2003 required law enforcement agencies to notify a local enforcing agency and the Department of Environmental Quality (DEQ) regarding the potential contamination of

property that was the site of an illegal drug lab, and required the DEQ to determine whether the premises were likely to be contaminated. Because the DEQ does not deal with indoor contamination, however, and the Department of Community Health is actively involved in State efforts to address meth activity, it was recommended that these DEQ responsibilities be transferred to the DCH.

It also was suggested that requiring the Michigan Department of State Police (MSP) to compile information related to methamphetamine violations and report to the Legislature regularly, and requiring the DEQ to report to the Legislature on environmental contamination associated with clandestine drug labs, could aid in the accurate evaluation of the State's meth problem and strategies to address it. Apparently, disparities in reporting practices and the type of information reported have made it difficult for State and local officials to assess and respond to the problem. Additionally, it was suggested that statewide guidance on meth lab cleanup should be developed to provide a standardized approach for local health departments, and that the Attorney General be authorized to bring an action against someone who publishes on the internet instructions for manufacturing meth.

CONTENT

Senate Bill 1112 amended the Housing Law of Michigan to do the following:

- Transfer from the Department of Environmental Quality to the Department of Community Health responsibilities regarding the contamination of property that is or has been the site of illegal drug manufacturing.
- Require a law enforcement agency to notify the DCH and a local agency within 48 hours of discovering an illegal drug manufacturing site.
- Allow a property owner to establish that the property is decontaminated by submitting written assessments and a certification to the enforcing agency.

Senate Bill 1115 creates a new act to require the Department of State Police to give the DCH information regarding the discovery of any methamphetamine laboratory; and require the DCH to post on its website the lab's location, the name of the agency that reported the lab, and whether a site has been remediated.

Senate Bill 1119 amends the Revised Judicature Act to allow the Attorney General to bring an action against a person who develops or maintains a website for the purpose of publishing instructions on manufacturing methamphetamine; and allow the court to order various forms of relief.

House Bill 5798 amended the Public Health Code to require the DCH, in consultation with the DEQ, to develop a cleanup of clandestine drug labs guidance document; and require the DCH to post the document on its website.

House Bill 5841 creates the "Methamphetamine Reporting Act" to require the MSP to collect and compile information regarding methamphetamine manufacture, use, possession, and distribution from various State departments and law enforcement agencies, report annually to the Legislature regarding methamphetamine trends in Michigan,

and make the report publicly available on the MSP website.

House Bill 5845 amended Part 201 (Environmental Response) of the Natural Resources and Environmental Protection Act to require the DEQ to report to the Legislature biennially on environmental contamination caused by releases associated with clandestine drug labs.

Senate Bill 1112 and House Bills 5798 and 5845 took effect on July 6, 2006. Senate Bill 1119 and House Bill 5841 will take effect on October 1, 2006. Senate Bill 1115 will take effect on January 1, 2007, and was tied to House Bill 5841.

The bills are described in more detail below.

Senate Bill 1112

Previously, under the Housing Law, a State or local law enforcement agency had to notify the enforcing agency and the DEQ regarding the potential contamination of any property or dwelling that was or had been the site of illegal drug manufacturing. Under the bill, the notice must be given to the enforcing agency, the local health department if it is not the enforcing agency, and the DCH, within 48 hours after a law enforcement agency discovers an illegal drug manufacturing site.

Under the bill, within 14 days after receiving the notification or as soon thereafter as is practically possible, the DCH, in cooperation with the enforcing agency, must review the information received from the law enforcement agency, emergency first responders, or hazardous materials team that was called to the site and make a determination regarding whether the premises are likely to be contaminated and whether that contamination may constitute a hazard to the health or safety of those who may occupy the premises. The fact that property or a dwelling has been used as a site for illegal drug manufacturing must be treated by the DCH as prima facie evidence of likely contamination that may constitute a hazard to the health or safety of occupants. (The Housing Law previously contained these requirements, but referred to the DEQ, rather than the DCH.)

The bill also requires the DCH, rather than the DEQ, to promulgate rules and procedures necessary to implement this section of the Law.

Under the Housing Law, if the property or a dwelling is determined likely to be contaminated, the enforcing agency must issue an order requiring it to be vacated until the property owner establishes that the property is decontaminated or the risk of likely contamination ceases to exist. The bill allows a property owner to establish that the property is decontaminated by submitting to the enforcing agency a written assessment of the property before decontamination and a written assessment of the property after decontamination, enumerating the steps taken to render the property decontaminated, and a certification that the property has been decontaminated and that the risk of likely contamination no longer exists. The property must remain vacant until the enforcing agency has reviewed and concurred in the certification.

Senate Bill 1115

The bill requires the Department of State Police to transmit to the DCH information obtained under the Methamphetamine Reporting Act regarding the discovery of any methamphetamine laboratory in the State. The DCH must post on its internet website the location of the lab and the name of the law enforcement agency or other agency that reported the lab's existence.

The DCH must keep the posted information current and include in it a statement as to whether the remediation of each laboratory site has been completed according to standards established by the Department.

The bill defines "methamphetamine laboratory" as the site where the illegal manufacture of methamphetamine has taken place, including all equipment and supplies used at the site for that purpose.

Senate Bill 1119

The bill authorizes the Attorney General to commence an action against a person who develops or maintains a website, or a page on a website, for the purpose of publishing instructions for the manufacture or creation of methamphetamine or information on how to obtain substances that may be used in

the manufacture or creation of methamphetamine.

In an action brought under the bill, the court may order one or more of the following forms of relief:

- Injunctive or other equitable relief, as appropriate.
- Actual damages sustained by the State or Michigan residents that are caused by the publication.
- Punitive damages that the court determines are just and equitable.
- Actual attorney fees and costs.

The bill specifies that it does not apply if the published information is only on how to obtain substances that may be lawfully possessed in Michigan and the purpose of the website is to provide information on obtaining the substances only for lawful purposes and in a lawful manner.

House Bill 5798

The bill requires the Department of Community Health, in consultation with the Department of Environmental Quality, to develop a cleanup of clandestine drug labs guidance document, within six months after the bill's effective date. The document must include detailed protocols for the preliminary site assessment, remediation, and postcleanup assessment of indoor environments and structures, as well as cleanup criteria based on human health risk similar to the cleanup criteria derived under Section 20120a of the Natural Resources and Environmental Protection Act (NREPA). The DCH must make the document available to the public on its website and, upon request provide a local health department with a physical copy of the document.

(Under Section 20120a of NREPA, the DEQ may establish cleanup criteria and approve of remedial actions in specific categories, including residential, commercial, recreational, industrial, and other land use-based categories established by the DEQ. The Department may approve a remedial action plan based on site-specific criteria. The DEQ must develop cleanup criteria based on generic human health risk assessment assumptions determined to characterize appropriately patterns of human exposure associated with certain land uses.)

The bill also added to the Public Health Code language parallel to that in the Housing Law (described above under Senate Bill 1112) requiring a law enforcement agency to give notice of the potential contamination of property or a dwelling that is or has been the site of illegal drug manufacturing, requiring determinations of whether the premises are likely to be contaminated and whether the contamination may constitute a hazard to the occupants, requiring property to remain vacant until it has been decontaminated, and allowing a property owner to establish that the property is decontaminated. As used in these provisions, the bill defines "dwelling" as any house, building, structure, tent, shelter, trailer or vehicle, or portion of any of those items, except railroad cars on tracks or rights-of-way, that is occupied in whole or in part as the home, residence, living, or sleeping place of at least one human being, either permanently or transiently. The bill requires the DCH to promulgate rules and procedures necessary to implement these provisions.

House Bill 5841

The bill requires the Department of State Police to compile information regarding the manufacture, use, possession, and distribution of methamphetamine in Michigan. The MSP must obtain information from itself; the Departments of Community Health, Human Services, Natural Resources, Environmental Quality, and Corrections; and each local police agency in Michigan. ("Local police agency" means the police department of a city, village, or township; the county sheriff; and the police department or public safety department of a hospital, community college, college, or university.)

The MSP also must provide, and require each entity mentioned above to provide to it, information regarding all of the following, as applicable:

- The name and address of the reporting entity.
- Whether the incident involved primarily the manufacture, possession, use, or distribution of methamphetamine.
- The city, village, or township and the county in which the incident occurred.
- Whether an individual under 18 years old was present at the scene when the incident occurred.

The MSP must implement procedures to ensure that the information provided is coordinated to prevent duplicative information from being obtained. Each agency must report required information to the MSP in the manner required by the Department.

The bill states that it does not require or authorize the disclosure of information that is privileged or otherwise restricted by law. Information submitted to the MSP by a State or local department or agency is confidential and not subject to disclosure under the Freedom of Information Act. The MSP must provide information obtained under the bill, however, to the United States Department of Justice or an entity designated by that Department, in the manner required by the Department or entity, for the purpose of obtaining Federal funds.

By April 1 of each year, the MSP must file a written report with the Secretary of the Senate and the Clerk of the House of Representatives, using the information obtained under the bill, identifying trends in methamphetamine manufacture, use, and distribution in Michigan and making recommendations to the Legislature regarding possible solutions to those problems. The MSP must make a copy of the report available to the public on its website.

The MSP may promulgate rules to implement the Methamphetamine Reporting Act.

House Bill 5845

The bill requires the DEQ to report to the standing committees of the Legislature with jurisdiction over issues pertaining to natural resources and the environment, on environmental contamination caused by releases that are associated with clandestine drug laboratories and reported to the Department, and that are subject to response activity under Part 201.

The report must include all of the following:

- The number of releases described above.
- The status of the responses to those releases.
- The identity of the entity or department that undertook the response activity.

The Department must report within 12 months after the bill's effective date and then biennially.

(Under Part 201, "response activity" means evaluation, interim response activity, remedial action, demolition, or the taking of other actions necessary to protect the public health, safety, or welfare, or the environment or natural resources. The term also includes health assessments and health effect studies carried out under the supervision, or with the approval, of the DCH, and enforcement actions related to any response activity.)

MCL 125.485a (S.B. 1112)
333.26371-333.26373 (S.B. 1115)
600.2975 (S.B. 1119)
333.12103 (H.B. 5798)
28.191-28.196 (H.B. 5841)
324.20112b (H.B. 5845)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

While the production of methamphetamine presents a direct danger to those involved in the operation, it also contaminates the environment where the drug is produced. In addition to the tangible waste that may be left behind, noxious gases may saturate walls, furniture, drapery, and carpet. What appears to be a clean dwelling might in fact be a hazardous waste site. Without adequate notice of contamination or response activity, landlords, realtors, property inspectors, and residents do not know whether property is habitable or marketable. Combined with potential cleanup costs and liability for unsafe conditions, this can discourage landlords from owning or managing rental units where meth labs have operated, and give investors a disincentive to purchase inner-city property—contributing to a lack of affordable urban housing.

Although Public Act 307 of 2003 established a mechanism within the Housing Law for communication between local enforcing agencies and the DEQ regarding potential contamination from drug labs, that Department does not focus on the safety of indoor environments. The Department of

Community Health, on the other hand, is responsible for ensuring safe housing under the Lead Abatement Act, and is actively involved with the State Police in implementing Michigan's methamphetamine control strategy. Under Senate Bill 1112 and House Bill 5798, the DCH will be responsible for determining whether premises are likely to be contaminated by meth production and whether the contamination poses a hazard to the health or safety of occupants.

In addition, by creating a procedure for property owners to establish that their premises are not contaminated, the bills will help promote the sale and rental of property that has been used as an illegal drug lab.

Supporting Argument

The Methamphetamine Reporting Act created by House Bill 5841 will facilitate the acquisition of accurate, uniform data pertaining to meth-related offenses, including the prevalence and geographic location of meth labs. Current disparities in reporting and the keeping of statistics at the local, State, and Federal levels prevent the true scope of the meth problem from being known. Gaps in information can have an impact on public awareness and education, as well as the response of law enforcement agencies and the court system. The data will help the State to identify trends and determine how resources can be used most effectively. Furthermore, the Act will enable the State to meet reporting requirements in order to secure Federal dollars available to fight meth manufacture and use.

Under Senate Bill 1115, the MSP will have to share with the Department of Community Health information collected under the new Act, and the DCH will have to post on its website the location of meth labs as well as whether remediation has been completed. These requirements will help protect the health and safety of Michigan residents.

Response: The Methamphetamine Reporting Act subjects the MSP to new paperwork requirements, which will have to be performed by existing personnel since the Department received no new funding for additional staff. Although the work will be accomplished, it may be done less efficiently than it would be if employees dedicated to this task were funded.

Supporting Argument

According to testimony before the Senate Health Policy Committee, the Kalamazoo County Health Department developed regulations concerning the cleanup of meth lab property. It is likely that other local health departments have developed or are in the process of developing their own regulations, as well. Under House Bill 5798, the DEQ is required to develop guidelines for the cleanup of meth labs, which will provide a uniform approach for municipalities that must assess and remediate structures contaminated by meth production.

Supporting Argument

In addition to contaminating the premises where methamphetamine is produced, meth labs pollute their surroundings. Waste products include corrosive liquids, acid vapors, and heavy metals. Reportedly, the toxic waste is often left in public places or abandoned buildings or vehicles where the labs were set up, or it is dumped on the ground, in waterways, or down sewers, contaminating soil, recreational water, and sources of drinking water. By requiring the DEQ to report biennially to the Legislature on releases associated with illegal drug labs that were subject to response activity, and requiring the MSP to report to legislative committees, House Bill 5845 will help ensure that lawmakers are kept informed of the extent of environmental contamination caused by meth production. House Bill 5841 also will ensure that the Legislature receives updated information on the extent of the meth problem in the State, by requiring the MSP to report annually to the Secretary of the Senate and the Speaker of the House on methamphetamine trends in Michigan.

Supporting Argument

Senate Bill 1119 gives the State one more tool to eliminate the production of methamphetamine, by authorizing the Attorney General to sue someone who publishes on the internet instructions for manufacturing meth or obtaining the necessary ingredients. Also, by specifying that the court may order the payment of actual damages sustained by the State or its residents, as well as punitive damages, the bill may enable the State to recover some of the cost of addressing the environmental, social, and medical problems caused by meth production and use.

Response: The Attorney General might encounter jurisdictional issues if a website is based outside of Michigan.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

Senate Bill 1112 and House Bill 5798

The Department of Community Health has indicated that it currently does not have staff with the expertise to make determinations on whether property used for the manufacture of illegal drugs is contaminated. The Department estimated it would need to hire an additional 2 FTEs to meet the requirements of the bill. Assuming an average cost of \$70,000 in salary, wages, and support for each additional FTE, this could increase administrative costs by about \$140,000 GF/GP. The State also will see a small increase in administrative cost associated with the creation and distribution of a guidance document and rules and procedures for the proper cleanup of suspected illegal drug sites.

Local health departments may see an indeterminate increase in cost providing guidance to law enforcement related to the cleanup of drug sites and ensuring that decontaminated properties are fit for habitation.

Senate Bill 1115

The Department of Community Health will see a small increase in administrative cost associated with maintaining and updating information on methamphetamine labs in the State.

Senate Bill 1119

Enforcement costs, damages, attorney fees, and costs will depend on the number of violations.

House Bill 5841

The bill will have an indeterminate fiscal impact on the Department of State Police, local law enforcement, and other State departments due to the requirement that certain data be compiled and forwarded to the Department. The Department also will incur some costs in preparing an annual report as required under the bill.

House Bill 5845

The bill will have no fiscal impact on State or local government.

Fiscal Analyst: Bill Bowerman
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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.