



Senate Fiscal Agency
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BILL ANALYSIS

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House Bill 5798 (Substitute S-1 as reported)
House Bill 5822 (Substitute H-2 as reported without amendment)
House Bill 5841 (Substitute H-3 as reported without amendment)
House Bill 5845 (Substitute H-2 as reported without amendment)
Senate Bill 1282 (Substitute S-1 as reported)
Sponsor: Representative Tonya Schuitmaker (H.B. 5798 & 5841)
Representative Rick Jones (H.B. 5822)
Representative Tim Moore (H.B. 5845)
Senator Jud Gilbert, II (S.B. 1282)
House Committee: Health Policy (H.B. 5798, 5822, & 5845)
Judiciary (H.B. 5841)
Senate Committee: Health Policy (H.B. 5798, 5822, & 5845)
Judiciary (H.B. 5841 & S.B. 1282)

Date Completed: 5-30-06

RATIONALE

The use and production of methamphetamine ("meth") has been a growing problem in the State—particularly in southwestern Michigan—since the 1990s. Methamphetamine is manufactured with common chemicals in clandestine laboratories. These labs can be set up with simple household items, such as mason jars, coffee filters, hot plates, pressure cookers, plastic tubing, and gas cans. Meth can easily be "cooked" from ingredients that may be purchased legally or stolen. Although there are several production methods, meth labs discovered in Michigan typically have used a manufacturing process that involves extracting pseudoephedrine or ephedrine from cold tablets, according to the Office of Drug Control Policy in the Michigan Department of Community Health (DCH).

Legislation enacted in recent years has taken various approaches to combat the use and production of meth. The legislation includes measures to restrict over-the-counter (OTC) sales of products containing ephedrine and pseudoephedrine to people at least 18 years old, and to require retailers to monitor the products and keep records of purchases. In order to enhance restrictions on access to a key ingredient in the meth manufacturing process, it has been suggested that internet and mail-order sales

of ephedrine and pseudoephedrine products be prohibited.

Recently enacted legislation also 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 DCH. This can be problematic for landlords, realtors, and prospective tenants or homebuyers, 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.

Under amendments to the Housing Law enacted in 2003, law enforcement agencies are required to notify a local enforcing agency and the Department of Environmental Quality (DEQ) regarding the potential contamination of property that has been the site of an illegal drug lab, and the DEQ must determine whether the premises

are 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 has been suggested that these DEQ responsibilities should be assigned to the DCH under the Public Health Code. It also has been suggested that statewide guidance on meth lab cleanup should be developed, to provide a standardized approach for local health departments.

In related matters, it has been 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.

CONTENT

House Bill 5798 (S-1) would amend the Public Health Code to do the following:

- Transfer the responsibility for serving as the State's environmental health agency from the Department of Community Health to the Department of Environmental Quality.**
- Require that the DCH, in consultation with the DEQ, develop a cleanup of clandestine drug labs guidance document within six months after the bill's effective date.**
- Prescribe procedures that law enforcement agencies, the DCH, and local health departments would have to follow after the discovery of an illegal drug manufacturing site.**

House Bill 5822 (H-2) would amend the Public Health Code to make it a felony to sell or distribute a product containing ephedrine or pseudoephedrine through the mail, internet, telephone, or other electronic means, subject to certain exceptions.

House Bill 5841 (H-3) would create the "Methamphetamine Reporting Act" to do all of the following:

- Require the MSP to collect and compile information regarding methamphetamine manufacture, use, possession, and distribution from various State departments and law enforcement agencies.**
- Specify that the Act would not authorize the disclosure of privileged or restricted information, except to the Federal government to secure Federal funding.**
- Require the MSP to report annually to the Legislature regarding methamphetamine trends in Michigan, and make the report publicly available on the MSP website.**

House Bill 5845 (H-2) would amend Part 201 (Environmental Response) of the Natural Resources and Environmental Protection Act to require the DEQ to report to the Legislature on environmental contamination caused by releases that were associated with clandestine drug labs.

Senate Bill 1282 (S-1) would amend the Code of Criminal Procedure to include in the sentencing guidelines the sale, distribution, or delivery of a product containing ephedrine or pseudoephedrine by mail, internet, or telephone.

The bills are described in detail below.

House Bill 5798 (S-1)

Environmental Health Agency

Under the Code, the DCH must serve as the environmental health agency for Michigan to facilitate a uniform approach to environmental health by the various public and private entities involved in that field. The DCH must do the following:

- Advise the Governor, boards, commissions, and State agencies on matters of the environment as they affect the health of the people of this State.**
- Cooperate with and provide environmental health resource support to State and local health planning agencies and other State, district, and local agencies mandated by law or otherwise designated to develop, maintain, or administer State and local health**

programs and plans, and other public and private entities involved in environmental health activities.

- Develop and maintain the capability to monitor and evaluate conditions that represent potential and actual environmental health hazards, reporting its findings to appropriate State departments and local jurisdictions, and to the public as necessary.
- Provide an environmental health policy for the State and an environmental health services plan to include environmental health activities of local health jurisdictions.
- Serve as the central repository and clearinghouse for the collection, evaluation, and dissemination of data and information on environmental health hazards, programs, and practices.

The bill would require the DEQ, rather than the DCH, to perform these duties.

Drug Lab Cleanup Guidance

Within six months after the bill's effective date, the DCH, in consultation with the DEQ, would have to develop a cleanup of clandestine drug labs guidance document. The document would have to 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 would have to make the guidance document available to the public on its website and, upon a local health department's request, provide the 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 the following categories: residential, commercial, recreational, industrial, other land use-based categories established by the DEQ, limited residential, limited commercial, limited recreational, limited industrial, and other limited 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.)

Discovery of Drug Manufacturing Site

Under the bill, within 48 hours of discovering an illegal drug manufacturing site, a State or local law enforcement agency would have to notify the local health department and the DCH regarding the potential contamination of any property or dwelling that was or had been the site of illegal drug manufacturing. The law enforcement agency would have to post a written warning on the premises stating that potential contamination existed and could constitute a hazard to the health or safety of those who might occupy the premises.

Within 14 days after receiving the notification, or as soon after as practically possible, the DCH, in cooperation with the local health department, would have to 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 were likely to be contaminated and whether the contamination could constitute a hazard to the health or safety of those who might occupy the premises.

The DCH would have to treat the fact that property or a dwelling had been used as a site for illegal drug manufacturing as prima facie evidence of likely contamination that could constitute a hazard to health or safety.

If the property and/or dwelling were determined likely to be contaminated, the local health department or the DCH would have to issue an order requiring the property or dwelling to be vacated until the property owner established that the property was decontaminated or the risk of likely contamination ceased to exist.

The DCH would have to promulgate rules and procedures necessary to implement these provisions within six months after the bill's effective date.

Under the bill, "dwelling" would mean 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.

House Bill 5822 (H-2)

The bill would prohibit a person from selling, distributing, delivering, or otherwise furnishing a product that contained any compound, mixture, or preparation containing any detectable quantity of ephedrine or pseudoephedrine, a salt or optical isomer of ephedrine or pseudoephedrine, or a salt of an optical isomer of ephedrine or pseudoephedrine, to an individual if the sale were transacted through use of the mail, internet, telephone, or other electronic means.

A person who violated the prohibition would be guilty of a felony punishable by imprisonment for up to four years and/or a maximum fine of \$5,000.

The bill would not apply to any of the following:

- A pediatric product intended primarily for administration to children under age 12, according to label instructions.
- A product containing pseudoephedrine in a liquid form if pseudoephedrine were not the only active ingredient.
- A product that the State Board of Pharmacy, upon application of the manufacturer or certification by the United States Drug Enforcement Administration as inconvertible, exempted from the bill because the product was formulated in a way that effectively prevented the conversion of the active ingredient into methamphetamine.
- A person who dispensed a product specified in the bill pursuant to a prescription.

Additionally, the bill would not apply to a person who, in the course of his or her business, sold or distributed products described above to either a person licensed by the State to manufacture, deliver, dispense, or possess with intent to manufacture or deliver a controlled substance, prescription drug, or other drug; or a person who ordered those products for retail sale pursuant to a license issued under the General Sales Tax Act.

Senate Bill 1282 (S-1)

The bill would include in the sentencing guidelines the sale, distribution, or delivery of a product containing ephedrine or pseudoephedrine by mail, internet, or telephone. A violation would be a Class F controlled substances felony with a statutory maximum sentence of four years' imprisonment.

The bill would take effect on October 1, 2006, and is tie-barred to House Bill 5822.

House Bill 5841 (H-3)

The bill would require the MSP to compile information regarding the manufacture, use, possession, and distribution of methamphetamine in Michigan. The Department would have to 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" would mean 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 would have to 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 of age was present at the scene when the incident occurred.

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

The bill states that it would not require or authorize the disclosure of information that was privileged or otherwise restricted by

law. Except as otherwise provided in the bill, information submitted to the MSP by a State or local department or agency would be confidential and not subject to disclosure under the Freedom of Information Act. The MSP would have to provide information obtained under the proposed Act, 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.

The MSP would have to file a written report by April 1 of each year 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 would have to make a copy of the report available to the public on its website.

The MSP could promulgate rules to implement the proposed Act. The bill would take effect October 1, 2006.

House Bill 5845 (H-2)

The bill would require 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 were associated with clandestine drug laboratories and reported to the Department, and that were subject to response activity under Part 201.

The report would have to 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 would have to 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 333.12103 (H.B. 5798)
Proposed MCL 333.7340 (H.B. 5822)
Proposed MCL 324.20112b (H.B. 5845)
MCL 777.13m (S.B. 1282)

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, already has responsibilities 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 House Bill 5798 (S-1), the DCH and the local health department would be responsible for determining whether premises were likely to be contaminated by meth production and

whether the contamination posed a hazard to the health or safety of occupants.

Supporting Argument

According to testimony before the Senate Health Policy Committee, the Kalamazoo County Health Department has 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 (S-1), the DCH, in consultation with the DEQ, would have to develop guidelines for the cleanup of meth labs, which would provide a uniform approach for municipalities that must assess and remediate structures contaminated by meth production.

Supporting Argument

Although Michigan already had strong penalties for the manufacture, delivery, and possession of meth, those penalties applied only to meth users and cooks who had been caught. Public Acts 86 and 87 of 2005 were enacted to require individuals to show a driver license or State ID proving they are at least 18 in order to buy OTC ephedrine and pseudoephedrine products, and to require retailers to keep a record of the transactions. By restricting access to a key ingredient, Public Acts 86 and 87 took a proactive approach to thwarting the spread of methamphetamine manufacture in clandestine labs. A prohibition against and penalties for internet and mail-order sales of ephedrine and pseudoephedrine products, as House Bill 5822 (H-2) and Senate Bill 1282 (S-1) would establish, would further restrict access to large quantities of meth ingredients.

Supporting Argument

House Bill 5841 (H-3) would create the Methamphetamine Reporting Act, which would 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 could help the State to identify trends and determine how

resources could be used most effectively. Furthermore, the bill would enable the State to meet reporting requirements to secure Federal dollars available to fight meth manufacturing and use.

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, House Bill 5845 (H-2) would help ensure that lawmakers were kept informed of the extent of environmental contamination caused by meth production.

Opposing Argument

House Bill 5798 (S-1) would not provide for funding for local health departments to fulfill their contamination assessment responsibilities under the bill. The additional costs associated with this unfunded mandate could create further hardship for county governments, some of which already are struggling to provide services in the face of a difficult economic climate.

Response: Although the bill does not identify a funding source, the appropriations bill for the DCH could include money to reimburse local governments for their expenses relating to contaminated property.

Legislative Analyst: Julie Koval

FISCAL IMPACT

House Bill 5798 (S-1)

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 has 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 would 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 that are not currently providing guidance to law enforcement related to the cleanup of illegal drug sites also could see an indeterminate increase in cost.

**House Bill 5822 (H-2) and
Senate Bill 1282 (S-1)**

The bills would have an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders would be convicted of the proposed offense. An offender convicted of the Class F offense would receive a sentencing guidelines minimum sentence range of 0-3 months to 17-30 months. Local governments would incur the costs of incarceration in local facilities, which vary by county. The State would incur the cost of felony probation at an annual average cost of \$2,000, as well as the cost of incarceration in a State facility at an average annual cost of \$30,000. Additional penal fine revenue would benefit public libraries.

House Bill 5841 (H-3)

The bill would 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 would incur some costs in preparing an annual report as required under the bill.

House Bill 5845 (H-2)

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

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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.