



Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: S.B. 113 of the 131st G.A.

Date: June 9, 2015

Status: As Introduced

Sponsor: Sens. LaRose and Beagle

Local Impact Statement Procedure Required: Yes

Contents: Provides for the remediation of real property on which an illegal methamphetamine manufacturing laboratory has been discovered

State Fiscal Highlights

- **Ohio Department of Health (ODH).** ODH will realize an increase in costs to establish certification for methamphetamine remediation contractors, to maintain a list of these individuals, to establish rules governing remediation and to provide technical assistance to local boards of health. ODH estimates start-up costs to be approximately \$227,000 and ongoing costs to be approximately \$304,000 each year. ODH is allowed to charge a fee for an initial certificate and a renewal certificate and would realize a gain in fee revenue as a result.

Local Fiscal Highlights

- **Local health departments.** Local boards of health could realize an increase in costs due to the provision that creates a procedure through which boards may require the remediation of property on which an illegal methamphetamine laboratory has been discovered. The bill allows a fee to be charged for inspections of remediation projects, which might help offset some inspection costs.
- **Local government entities involved in remediation.** Some local government entities, such as local law enforcement agencies, currently pay some methamphetamine remediation costs. As a result, remediation costs may decrease for those local government entities impacted since property owners would be responsible for these costs under the bill.
- **Municipal courts.** Additional civil cases may be brought forward as a result of the liability for contamination costs and the transfer of real property provisions. If this occurs, then there would be an increase in court costs. However, there could be a gain in filing fee revenues.

Detailed Fiscal Analysis

Methamphetamine remediation contractor certificates

Under the bill, each person that seeks a methamphetamine remediation contractor certificate is to apply to the Director of the Ohio Department of Health (ODH). The applications are to be made on the form and in the manner prescribed by the Director in rules. The bill specifies that the certificate is good for two years and can be renewed in accordance with renewal procedures set forth in existing law for occupational licenses and certificates. The Director is to issue a certificate to an applicant who meets the required training and qualifications and pays the certification fee established in rule. The bill authorizes the Director, after providing an opportunity for an administrative adjudication, to reject an application or to suspend or revoke a certificate. The Director is also required to maintain a list of methamphetamine remediation contractors certified. The bill maintains that the list is a public record and is subject to inspection and copying.

The bill also requires the Director of Health, not later than nine months after the effective date of the bill, to adopt rules governing methamphetamine remediation, and within one year after the bill's effective date, rules providing for the certification of remediation contractors. When adopting rules, the Director is to give consideration to process-based recommendations regarding methamphetamine remediation issued by the United States Environmental Protection Agency, including voluntary guidelines for methamphetamine laboratory cleanup and any other recommendations or guidelines the Director deems appropriate. The bill specifies items that the rules must include.

Fiscal effect

ODH will realize an increase in costs to establish certification for methamphetamine remediation contractors and to maintain a list of these individuals, as well as to establish rules governing certification and remediation. ODH estimates start-up costs to be approximately \$227,000 and ongoing costs to be approximately \$304,000 each year. Start-up costs would include things such as training, the purchase of supplies and equipment, and rule development database enhancements, outreach, and web development. Ongoing costs would include two full-time program staff, plus two part-time staff for administration and information technology support. The staff would oversee the remediation contractor certificate program and would also, among other things, provide technical assistance to local boards of health regarding remediation. Under the bill, ODH is allowed to charge a fee for an initial certificate and a renewal certificate, which will be established in rule. ODH estimates the certificate fee to be approximately \$500 based on a review of fees charged by other states. At this time, ODH does not know how many contractors are in the state. The amount of biennial revenue collected from the certification fees will depend on the number of contractors applying for certification.

Required notifications of illegal methamphetamine manufacturing laboratory

The bill requires a law enforcement agency that discovers an illegal methamphetamine manufacturing laboratory on real property to notify the following: (1) the owner of record or the owner's statutory agent, (2) the board of health with jurisdiction, and (3) the public children services agency with jurisdiction over the property if it appears that children are living on the property. The notice may be in electronic form. The notice must contain all information specified in rules adopted by the Director of Health and may be provided on a form included in the rules.

Fiscal effect

Local law enforcement agencies could realize an increase in administrative costs relating to providing this notification if they do not currently provide this notification to the specified entities. Since the notice can be provided electronically, the increase is likely to be negligible.

Board of health duties

The bill specifies that within 30 days after receiving a notice, a board of health must determine whether a structure or unit on the property is an illegal methamphetamine manufacturing laboratory. If the property is determined as such, the board is to declare the unit or structure a public health hazard that may not be occupied until the board receives certification by affidavit from a certified methamphetamine remediation contractor that a remediation project has been completed in accordance with standards and procedures established by rules. If the board declares a public health hazard, the board is also to deliver a written notice, which may be in electronic form, to the owner of record or the owner's statutory agent specifying the following: that the property or a structure or unit on the property has been declared a public health hazard and may not be occupied until it has been remediated, the procedure for challenging the declaration, the standards and procedures for methamphetamine remediation set forth in rules, that the public health hazard declaration will not be lifted until the board receives certification by affidavit that a methamphetamine remediation project has been completed, and directions for accessing ODH's list of certified methamphetamine remediation contractors.

The board is also to afford the owner the opportunity to challenge the public health hazard declaration and present evidence. The board is to maintain in its records a notice identifying the real property with a complete and accurate description of the property and other relevant data.

The bill specifies that a board of health may conduct inspections of methamphetamine remediation projects as necessary to monitor compliance and may charge fees authorized by the Director of Health under rules. Inspections may be scheduled or random.

The bill requires a methamphetamine remediation contractor to certify in an affidavit to the board of health when a remediation project has been completed. When a board receives this certification by affidavit the board must do either of the following within 60 days: accept the certification as a final determination, or conduct an independent investigation to determine whether the project has been completed in accordance with the rules. The bill requires the board to certify, not later than 30 days after making such a determination, that the property, structure, or unit is no longer a public health hazard and may be occupied. Written notice of this, which may be in electronic form, must be given to the owner of record or the owner's agent and a copy must be maintained by the board. If the board determines that a remediation project has not been completed, the board is to notify the owner or the owner's agent of the reasons for this determination. If a new certification is submitted, the board must either accept it or make an independent investigation.

Fiscal effect

Local boards of health are likely to experience an increase in costs relating to implementing the provisions above. Currently, it appears that local boards address methamphetamine labs through public health nuisance laws in some jurisdictions; however, in other jurisdictions, it appears that other government entities, such as local law enforcement agencies, may address methamphetamine laboratories instead. According to the Association of Ohio Health Commissioners (AOHC), the local boards not currently involved would realize an increase in costs. In addition, AOHC states that it is possible that costs could also increase for those local boards that are currently involved in remediation efforts. This could occur if additional duties are required as a result of the bill. The costs could include, among other things, assessing the property to determine if it is a public health hazard, inspecting remediation projects, and possibly conducting an independent investigation. The bill does allow a board of health to charge a fee for inspections of remediation projects. The fee is to be established in rule and may help offset some of the inspection-related costs.

Liability for contamination costs

The bill specifies that the owner of property that is declared a public health hazard due to the existence of a methamphetamine lab must pay the costs of remediation. However, the bill provides that if the owner did not create, operate, or consent to the operation of the illegal methamphetamine manufacturing laboratory, the owner has a right to recover damages against any person who created or operated the illegal methamphetamine manufacturing laboratory or occupied the structure or unit on the property and consented to the operation. The damages could include all monetary losses incurred because of contamination, including reasonable attorney fees.

Fiscal effect

According to the Ohio Buckeye Sheriffs' Association, some local law enforcement agencies currently pay some costs related to remediation. As a result, remediation costs may decrease for these entities since the property owner would be responsible under the bill. Any other local government agencies involved in remediation cleanup might realize a decrease in costs as well.

It is possible that additional civil cases may be brought forward since an owner who did not create, operate, or consent to the operation of an illegal methamphetamine manufacturing laboratory has a right to recover damages. If additional civil cases are brought forward, there would be an increase in court costs. However, there could be a gain in court filing fee revenues.

Transfer of real property

The bill requires a transferor of real property to make the following disclosures to the transferee or the transferee's agent: (1) if the real property or a structure or unit to be transferred has been declared a public health hazard and has not been certified as no longer being a public health hazard, and (2) if the real property or a structure or unit to be transferred has never been declared a public health hazard, but the transferor has actual knowledge that an illegal methamphetamine manufacturing laboratory was or is located on the property or in a structure or unit, the transferor is to disclose the existence or former existence. The disclosure of this must be made by delivering to the transferee or the transferee's agent a written, signed, and dated disclosure document, including a copy of the declaration if the property was declared a public health hazard.

If a transferor of real property subject to this does not provide the required disclosure prior to entering into a transfer agreement, the transferee may rescind the transfer agreement in a written, signed, and dated document of rescission that is delivered to the transferor or the transferor's agent without incurring any legal liability. In order to rescind a transfer agreement, the transferee must cause the document of rescission to be delivered to the transferor or the transferor's agent by the earlier of the following: 5:00 p.m. of the third business day following the date on which the transferee or transferee's agent receives the required disclosure, or prior to closing on the date of the proposed closing of the transfer.

If the transferor fails to provide the required disclosure prior to the closing of the transfer, the transferee has the right to recover damages for all monetary loss incurred because of the failure. This would include the cost of remediation, damages for injury, death, or loss to person or property, and reasonable attorney fees. However, the bill specifies that the transferor is not liable, if at the time of the closing of the transfer, the transferor did not have actual knowledge that the real property or a structure or unit had been declared a public health hazard, or that an illegal methamphetamine manufacturing laboratory was, or had been, located at the property.

Fiscal effect

It is possible that additional civil cases may be brought forward if there are disputes concerning the transfer of real property and the required disclosure. If this occurs, then there would be an increase in court costs. However, there could be a gain in court filing fee revenues.

Background information on methamphetamine remediation costs

Methamphetamine labs vary and can be crude or technologically advanced. Thus, costs related to remediation also vary. Costs depend on a number of factors such as the following: size of property and structure; accessibility of property; contractor rates in the region; amount of debris; contamination level; pre- and post-remediation sampling; and refurbishment costs.¹ However, according to documents on ODH's website,² costs average \$6,500 per \$1,000 square feet of property. There may also be additional assessment costs of \$1,400.

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¹ United States EPA Voluntary Guidelines for Methamphetamine Laboratory Cleanup.

² <http://www.odh.ohio.gov/~media/ODH/ASSETS/Files/eh/HAS/methlabcleanup.ashx>.