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FISCAL IMPACT REPORT

ORIGINAL DATE 01/29/12

SPONSOR Keller & Varela LAST UPDATED _____ HB _____

SHORT TITLE State Fair & Commission as State Agency SB 4

ANALYST Lucero

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY12	FY13		
	See Fiscal Impact		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY12	FY13	FY14		
	(Indeterminate)		Recurring	State Fair Enterprise Fund

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From
State Personnel Office (SPO)
New Mexico State Fair

SUMMARY

Synopsis of Bill

Senate Bill 4 clarifies and establishes the duties of the state fair commission and revises the term of appointments to five year staggered terms and removes the requirement that each commissioner furnish a surety bond as provided in the Surety Bond Act; however, the secretary and treasurer continue to be required to be bonded. The bill requires the executive director to be appointed by the commission and confirmed by the Senate and clarifies that officers and employees of the New Mexico State Fair are covered by, and subject to, the provisions of the Personnel Act unless expressly exempted. The bill identifies the powers and duties of the executive director.

The bill clarifies that the New Mexico State Fair is a state agency; provides that the executive director of the New Mexico State Fair and the State Fair Commission have the authority to control the daily operations of the State Fair; requires the executive director to report at least twice a year to the Department of Finance and Administration on the general operation and performance of the state fair; eliminates bonding authority and eminent domain powers of the State Fair Commission; requires that all fees be established by the State Fair Commission by formal rule making; and changes from the Tourism Department to the Cultural Affairs Department the agency that the State Fair Commission is administratively attached.

The bill establishes procedural requirements for State Fair Commission meetings including a requirement that the Commission meet at least quarterly, shall provide an opportunity for the public to comment at the meetings, and comply with the Open Meetings Act. .

The bill creates an enterprise fund in the state treasury and directs that all available state fair funds be transferred to this fund.

The effective date for the provisions of the bill is July 1, 2012.

FISCAL IMPLICATIONS

No new appropriation is included in the bill but directs the transfer of all state fair funds to the newly created state fair enterprise fund. In its analysis, state fair personnel state that revenue losses may occur if the agency is required to follow all formal rule making procedures required by the bill because the agency will not be able to quickly respond to matters dealing with the entertainment industry, e.g., negotiate fees, rents and changes in market conditions.

This bill creates a new non-reverting fund and provides for continuing appropriations. The LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds, as earmarking reduces the ability of the legislature to establish spending priorities.

The bill requires the State Fair Commission to meet at least quarterly. More frequent meeting of the commission could result in additional mileage and per diem costs. However, it is not known how frequently the commission has met over the past several years and whether the new requirement to meet at least quarterly would result in additional costs.

SIGNIFICANT ISSUES

In its analysis, the state fair comments that:

Section 11 of the bill codifies the duties of the executive director setting forth the current management practices by the State Fair manager, except (1) that portion of subsection F which denies the executive director to negotiate fees, rents and charges due to the reference to section 4 of the bill which requires such charges to be set by formal rule making procedures and (2) Section 9 (16-6-14) that allows the majority of the State Fair Commission to also have the powers of the executive director. The State Fair Commission is subject to the Open Meetings Act (section 6 of the Bill and Section 10-15-1 et seq., NMSA 1978). As a result all financial transactions administered by the State Fair Commission would have to be at a meeting of the Commission and in compliance with the Open Meetings Act. In FY11 there were approximately 6,889 such financial

transactions by the State Fair administration. The notice requirements under the Open Meetings Act and the scheduling necessary to obtain a quorum of the Commission alone would delay any orderly and efficient management of the daily operations of the State Fair.

However, analysis of the bill seems to clarify that Commission has the power to set fees and rates, but the executive director has day to day oversight of the transactions within the boundaries set by the Commission. It would appear that not all 6,889 financial transactions would need approval from the Commission. .

The bill requires that the director and commission provide monthly budget status report to the Department of Finance and Administration (DFA). The bill also requires that the director provide a report on the general operations and performance of the state air to DFA at least twice per year.

PERFORMANCE IMPLICATIONS

Analyses provided suggest the daily operations of the state fair could be “slowed up” by having to adhere to formal rule making procedures. Requiring the formal approval for some activities will necessitate more meetings of the commission thereby incurring increased cost for mileage and per diem and mileage necessary for commissioners.

ADMINISTRATIVE IMPLICATIONS

See Performance Implications.

TECHNICAL ISSUES

SPO reports that:

The term “the secretary’s and the treasurer’s hands” in Section 2B appears to change the single of office of the Secretary and Treasurer into two offices which is inconsistent with the existing wording of the statute and would double the per diem and mileage necessary because both commissioners would have to be involved in all financial transactions as discussed further herein.

OTHER SUBSTANTIVE ISSUES

NMSF comments that:

There is a conflict between Sections 16-6-1 and 16-6-3 NMSA 1978. Language in section 16-6-1 NMSA removes the requirement that each commissioner furnish a surety bond as provided in the Surety Bond Act, while section 16-6-3 NMSA 1978 requires the commissioner who holds the office of secretary and treasurer to be bonded.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Bill relates to HB 157. HB 157 proposes to combine the Tourism and Cultural Affairs departments.