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## FISCAL IMPACT REPORT

SPONSOR Stewart ORIGINAL DATE 1/24/22  
LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_  
SHORT TITLE Extend Downs at ABQ Lease SJR 10  
ANALYST Chenier

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY22	FY23	FY24		
(458.3)			Nonrecurring	State Fair

(Parenthesis ( ) Indicate Revenue Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

New Mexico Attorney General (NMAG)

General Services Department (GSD)

New Mexico State Fair

### SUMMARY

#### Synopsis of Bill

Senate Joint Resolution 10 would permit an extension of the lease between the New Mexico State Fair and the Downs at Albuquerque incorporated for the racetrack, grandstand, and casino area of the State Fairgrounds until February 28, 2047.

### FISCAL IMPLICATIONS

Due to Covid-19 related shutdowns at the Downs at Albuquerque (Downs), the State Fair was served notice of a force majeure event (lease clause removing liability for the unavoidable pandemic caused closures) by the Downs. The two parties want to enter into an agreement and release of claims. Under the agreement, 50 percent of the April 2020 rent will be abated and the remaining 50 percent of the rent will be deferred. Rent will also be deferred for six months after the Downs was allowed to reopen. All deferred rent will be paid by the Downs in equal monthly installments over the extended term of the lease until February 28, 2047. State Fair estimates that the abatement of rent under the release of claims agreement will result in a \$458.3 thousand decrease in revenue in 2022.

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As a result of the force majeure declaration, no rent was paid to the New Mexico State Fair for 18 months amounting to \$3.8 million in lost rental income. The lost income would be booked as a receivable to State Fair's books and slowly be reduced over the course of the lease.

From federal American Rescue Plan Funds, LFC's recommendation includes a \$5 million nonrecurring deficiency appropriation for the State Fair. These funds would partially be used to cover the loss of revenue to the State Fair.

### **SIGNIFICANT ISSUES**

The extension of the Downs' lease for a term exceeding 25 years must be approved by the Legislature pursuant to Section 13-6-3 NMSA 1978, and Section 5.1 of the original lease agreement between the parties.

The Downs has leased the racetrack, grandstand, and casino area of the state fairgrounds from the New Mexico State Fair since January 11, 1985. The current lease between the parties commenced on January 12, 2012, for a term of 300 months, or 25 years.

Due to the severity of the Covid-19 pandemic, the Downs ceased all operations effective March 16, 2020 as required by the current public health orders. On April 1, 2020, the Downs served formal notice of a force majeure event pursuant to the terms of the lease to the New Mexico State Fair. As a result of the force majeure declaration, no rent was paid to the New Mexico State Fair for 18 months amounting to \$3.8 million in lost rental income.

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Senate Joint Resolution 10 will assist the parties to carry out their agreement regarding the Down's cessation of operations during the pandemic. Without the Legislature's approval of the extended term of the lease, the parties would likely have no option but to initiate litigation regarding the Downs' claim of force majeure event. This litigation would likely be costly and there would be no guarantee that the State would receive any of the back rent.

EC/rl/acv