

Synopsis of Original Bill

Senate Bill 298 requires the New Mexico State Fair to comply with the Albuquerque noise control ordinance.

FISCAL IMPLICATIONS

There is no fiscal impact.

SIGNIFICANT ISSUES

Currently, the state fairgrounds, being state lands, are not subject to the Albuquerque noise control ordinance, and there is anecdotal evidence to suggest residents of neighborhoods adjacent to the fairgrounds sometimes complain about noise levels during concerts and other events.

The State Fair provided the following information in its analysis.

The State Fair already addresses the issue of noise impacting neighborhoods through a number of internal requirements, such as contract language which specifies noise limits consistent with the Albuquerque city ordinance decibel restrictions (some contracts already contain that language and others are in the process of being updated to include that language). As an example, the State Fair's current contract with entertainers for fair-time concerts includes the following language:

The New Mexico State Fair has a sound policy that conforms to the City of Albuquerque Noise Control Ordinance 9-9-1 through 9-9-99. Sound levels must be appropriate for the venue and audience at all times. The decibel levels shall be at the exclusive discretion of the Fair at all times. If a decrease in sound levels is requested by Fair personnel, you must comply immediately with the request or risk immediate cancellation of the performance without compensation.

In many cases, management uses discretion to direct that decibel levels be considerably lower than the city ordinances mandates, depending on the location of the stage, type of event, genre of music and weather conditions, etc. If the decibel levels are set in statute, the proposed legislation may impact the State Fair's ability to set more stringent controls/lower decibel requirements.

However, the bill's language does not set a specific decibel level or prohibit the State Fair from implementing more stringent noise controls; it requires the agency to comply with the city's noise ordinance, and noise levels below the maximum allowed under Albuquerque's ordinance would still be in compliance with the law.

ADMINISTRATIVE IMPLICATIONS

There are no significant administrative implications. The bill would presumably require agency staff to monitor noise levels of various events and stages; however the State Fair reports it already employs mechanisms to do so, including the use of noise measurement devices.

TECHNICAL ISSUES

The State Fair reports the following technical issues.

It is unclear whether this legislation would apply only during the annual fair event or apply to interim events as well. Additionally, there is no clearly defined enforcement mechanism.

Potential legal issues: Article XX, Section 22 of the New Mexico Constitution provides exclusive authority over state lands with respect to pollution control.

“The protection of the state's beautiful and healthful environment is hereby declared to be of fundamental importance to the public interest, health, safety and the general welfare. The legislature shall provide for control of pollution and control of despoilment of the air, water and other natural resources of this state, consistent with the use and development of these resources for the maximum benefit of the people. *Id.* (1971.)

Consistent with this constitutional mandate, it is the intention of the Legislature to give the Environmental Improvement Board statewide, paramount authority to enforce regulations and standards in the various areas listed and that all other entities of government and political subdivisions thereof must conform. *N.M. Mun. League, Inc. v. N.M. Env'tl. Improvement Bd.*, 88 N.M. 201, 539 P.2d 221 (Ct. App.), cert. denied, 88 N.M. 318, 540 P.2d 248 (1975).

The Environmental Improvement Act (§74-1-7 NMSA (2000)), grants the department, in part, the following duties:

- A. The department is responsible for environmental management and consumer protection programs. In that respect, the department shall maintain, develop and enforce rules and standards in the following areas:
- B.
 - (1) food protection;
 - (6) noise control;**
 - (7) nuisance abatement;” *Id.*

As a matter of statutory interpretation, the specific grant to the Environment Department in the Environmental Improvement Act trumps the city's claim to general authority under the Sewage Facilities Act. *Interstate Nuclear Servs. Corp. v. Santa Fe*, 179 F Supp.2d 1253 (D.N.M. 2000).