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FISCAL IMPACT REPORT

ORIGINAL DATE 1/29/15
 LAST UPDATED 2/27/15

SPONSOR McSorley HB _____

SHORT TITLE State Fair Noise Control Compliance SB 298/aSPAC

ANALYST Clark

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico State Fair

SUMMARY

Synopsis of SPAC Amendment

The Senate Public Affairs Committee Amendment to Senate Bill 298 inserts language to change the bill’s requirement for noise control to state, “Except during the New Mexico state fair, the state fair commission shall prepare, adopt, publish and enforce all necessary rules for the New Mexico state fair to comply with the Albuquerque noise control ordinance.” The new language creates a possible technical issue by apparently referring to the annual fair event in the first instance and the agency in the second instance by the same name of “New Mexico state fair.” Statute establishes “New Mexico state fair” as the agency and refers to the annual event as the “state fair.” Additionally, providing the exception for the event at the beginning of the sentence could create confusion, and this could be remedied by moving the exception to the end of the sentence to clarify that the exception is explicitly in regard to complying with the noise control ordinance during the fair event and not in regard to preparing, adopting and publishing rules.

Apart from this technical issue, the amendment serves to specify the commission shall ensure the agency complies with the Albuquerque noise control ordinance during interim events throughout the year but not for the annual fair event, addressing the technical issue the agency reported for the original bill.

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).