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FISCAL IMPACT REPORT

ORIGINAL DATE 02/27/17

SPONSOR Powdrell-Culbert **LAST UPDATED** _____ **HB** 493

SHORT TITLE Amusement Ride Oversight **SB** _____

ANALYST Amacher

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY17	FY18	FY19		
	\$12.0	\$15.0	Recurring	Amusement Ride and Device Safety Fund (See Fiscal Impacts)

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Office of the Attorney General (OAG)
Regulation & Licensing Department (RLD)

SUMMARY

Synopsis of Bill

House Bill 493 provides for increased oversight over amusement rides and devices to safeguard against personal injuries and property damage. As proposed, nonprofit organizations will no longer be exempt from compliance with amusement ride and device certification requirements. Penalties for non compliance are provided in this bill. This bill repeals the Carnival Ride Insurance Fund and replaces it with the Amusement Ride and Device Safety Fund consisting of all filing fees received by the Regulation & Licensing Department. HB 493 has an effective date of July 1, 2017.

FISCAL IMPLICATIONS

HB 493 repeals the existing Carnival Ride Insurance Fund and replaces it with the Amusement Ride and Device Safety Fund. While the fund may have changed names, it remains in the state treasurer's office. Based upon the proposed increase in licensure fees, an indeterminate increase may occur. Revenue funds reflected in the charts above are provided by the Regulation & Licensing Department.

SIGNIFICANT ISSUES

House Bill 493 provides for increased oversight over amusement rides and devices to safeguard against personal injuries and property damage. As proposed, nonprofit organizations will no longer be exempt from compliance with amusement ride and device certification requirements. Penalties for non compliance are provided in this bill. This bill repeals the Carnival Ride Insurance Fund and replaces it with the Amusement Ride and Device Safety Fund consisting of all filing fees received by the Regulation & Licensing Department.

Section 1 amends the title of the act from Carnival Ride Insurance to Amusement Ride and Device Safety Act.

Section 2 outlines the purpose of the act which is to guard against personal injuries and property damage and to certify that amusement rides or devices are designed, constructed, assembled or disassembled, maintained, operated and inspected to avoid injuries or property damage.

Section 3 expands the definition of an amusement ride or device to include a vehicle or boat, ziplines, rock climbing walls, bouncy/inflatable structures and other rides. Definitions are provided for “approved inspector”, “bungee jumping”, “certification” and “local entity”. “Local entity” means a private or public person that has legal control of the property on which an amusement ride or device is operated, including the state fair commission, a municipal park commission or a private landowner.

Section 4 amends the certification required ensuring certification s based upon a completed application, proof of insurance, a certificate of inspection and payment of a fee for each amusement ride or device. A sticker indicating these requirements have been satisfied shall be issued by the department and must be displayed on the ride or device. The office of superintendent of insurance is required to verify the \$3 million liability insurance policy. Additional certification standards and requirements for supplemental inspections are provided for in this section. Fees are outlined as \$65 dollars per amusement ride or device by the insured owner of the rides/devices; and a \$35 fee for certificate of registration is required by an approved inspector consistent with the national association of amusement ride safety officials.

Section 5 provides an immediate penalty after a failed inspection or failure to comply with the minimum safety standards set forth in this act. A civil penalty is provided for not to exceed \$1,000 per amusement ride or device for each day of noncompliance with this act. All civil actions must comply with the provisions of the Uniform Licensing Act.

Section 6 presents conforming changes consistent with this legislation ensuring the state and the Regulation & Licensing Department are not liable with respect to any claims relating to an amusement ride or device or to an injury or damages from such ride or device.

Sections 7 and 8 repeals the existing Carnival Ride Insurance Fund and in essence replaces it with the Amusement Ride and Device Safety Fund.

ADMINISTRATIVE IMPLICATIONS

The Office of the Attorney General’s Litigation Division is assumed to prosecute violations of the act. This responsibility adds additional staff time and resources without funding to the OAG; funds collected are directed to the Regulation & Licensing Department.

OTHER SUBSTANTIVE ISSUES

In New Mexico, before a carnival ride is permitted to operate the current law requires a certification of inspection of each ride by a third party inspector annually within the state. So as the ride is transported from one county to the next within a twelve month period the certification of inspection remains valid. Current law also relies on the carnival ride owner to inspect the ride each day the ride is operated before the general public may go on board. The owner is required to keep a log of such inspections and may pay a \$50 per ride per inspection filing fee with the RLD. Carnival rides may not operate without a liability insurance policy of at least \$3 million dollars in the event of an injury from carnival ride.

Nationally, no federal regulation in place for amusement park or carnival rides. Challenges in regulation often lead to gaps in oversight between states and nationally. For instance, in some cases it depends upon if a park is permanent or is a traveling park; or if a bouncy house or rock climbing wall is included in the definition of an amusement device or ride. In many instances oversight is designed to an age group of the participant. The smaller rides geared for younger participants (ages 12 and under) may have less certification requirements in some states compared to more extreme advanced rides for older participants. There is very little national data or consistent reporting on such oversight by agencies. Despite the recent advances in rider safety from engineering and technological advances, not every ride in operation is from the same era of engineering and design.

Each state either has or is currently working on oversight specific to the attractions in their states. States have greater flexibility and can address oversight of amusement rides in a faster timeline through several licensures, inspection, and required insurance minimums. In those states where a permanent amusement park may have 1,000 or more employees inspection is performed by private inspectors, who are often on site for each day of operation; for example, Florida relies on Universal Studios' and Walt Disney World's private inspections to meet safety standards set forth by the state. The federal oversight that does exist is through the CPSC – Consumer Product Safety Commission. In short, the CPSC is tasked in identifying defects in consumer products which present substantial hazards. However, the jurisdiction of the CPSC is limited and oversees devices such as trampoline parks, rock climbing walls and portable amusement rides.

According to a report by the National Safety Council Research and Statistical Service Group in 2015, 1,146 injuries were reported from fixed-site amusement rides in 2014. This report also indicates that 111 injuries were reported as serious which required immediate hospitalization. Although injuries are considered by some to be rare in comparison to the millions of participants, injuries still occur and in some instances prove fatal. In August 2016 there were several nationally recognized accidents such as the Ferris wheel gondola that overturned three girls more than 30 feet to the ground in Tennessee; and the decapitation of a ten year old boy on the world's tallest water slide (the Verrückt) in Kansas. Reevaluating the level of oversight and safety standards of amusement rides or devices is a natural conclusion after such tragic accidents.

The Regulation & Licensing Department (RLD) notes that this bill maintains the exceptions for playground equipment, single passenger coin-operated devices, small promotional events, merry-go-rounds or five or fewer kiddie rides. However, when it comes to certain rides and activities in which safety inspections and compliance are critical, this bill allows the RLD the authority to require reasonable supplemental inspections. This includes the requirement to have an inspector on the premises for the duration of an event using amusement rides or devices.

The RLD indicates that in rare, but serious safety related situations, the revisions proposed allow for immediate temporary cessation of an amusement ride or device upon determination that a hazardous or unsafe conditions warrant corrective measures, or in the event an operator has failed to comply with insurance and certification standards. This bill allows the RLD regulators the ability to suspend a certification of an operator for a cancelled insurance policy or inadequate coverage.

The Office of the Attorney General (OAG) notes that HB 493 does not clarify what prosecuting agency shall prosecute violations of this act. The OAG would likely provide the civil administrative prosecutors to bring civil action for violations. Since this act does not outline a board or a commission to oversee the provisions outlined it may prove difficult to apply the provisions of the Uniform Licensing Act to the disciplinary proceedings. The OAG points out that the Uniform Licensing Act is generally applied to over two dozen professional licensing boards and commissions. And the statute is crafted to provide procedures and guidance to discipline and procedures of a public body, not a department.

The OAG seeks clarity as to whether the operator or the department would bear the costs of having an inspector present during operation of a ride as contemplated under subsection H on page 7.

Furthermore, the OAG suggests the immediate cessation of operation of a ride contemplated in this bill (pages 8-9) could more clearly define who an “authorized representative” of the department is and how they are identified, especially due to the significant authority they possess to immediately cease operations of rides.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The existing oversight in New Mexico of amusement rides and devices will continue to fall short in addressing safety concerns before an accident may occur. As RLD points out the current law remains confusing for operators and the general public. It does not adequately address the trends in rides, activities, and devices, which leads to non-compliance and heightened safety concerns for children and all other participants.

JMA/al/jle