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## FISCAL IMPACT REPORT

ORIGINAL DATE 01/29/13  
 SPONSOR Keller LAST UPDATED 02/06/13 HB \_\_\_\_\_

SHORT TITLE State Fair as State Agency SB 31

ANALYST Clark

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY13	FY14		
	See Fiscal Impact		

(Parenthesis ( ) Indicate Expenditure Decreases)

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY13	FY14	FY15		
	(Indeterminate)		Recurring	State Fair Enterprise Fund

(Parenthesis ( ) Indicate Revenue Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

New Mexico State Fair  
 Department of Finance and Administration (DFA)  
 Department of Cultural Affairs (DCA)  
 State Personnel Office (SPO)  
 Tourism Department (TD)

### SUMMARY

#### Synopsis of Bill

Senate Bill 31 clarifies that the New Mexico State Fair is a state agency and clarifies and establishes the duties of the State Fair Commission. Staggered terms for commissioners are established.

The Department of Finance and Administration provides the following summary detailing the changes by section.

Senate Bill 31 enacts the following provisions pertaining to the State Fair.

- 1) SB 31, Section 1 amends Section 16-6-1 NMSA 1978, (i) providing for staggered commissioner terms and clarifying that the terms of no more than two State Fair Commissioners will expire in each year; (ii) clarifying that, in the event of a State Fair Commissioner vacancy, an appointment to fill that vacancy is for the remainder of the unexpired terms; and (iii) eliminating the surety bond requirement for each commissioner under the Surety Bond Act.
- 2) SB 31, Section 2 amends Section 16-6-3 NMSA 1978, making stylistic changes, including use of gender neutral language.
- 3) SB 31, Section 3 amends Section 16-6-3.1 NMSA 1978 (i) to require that the newly created executive director submit reports required by current law and (ii) creates a new requirement that the executive director report at least twice annually to the Department of Finance and Administration and the Legislative Finance Committee on the general operations and performance of the State Fair.
- 4) SB 31, Section 4 amends Section 16-6-4 NMSA 1978, (i) removing language entrusting the State Fair Commission with the entire direction of its business and its financial affairs; (ii) removing reference to the State Fair's bonding authority, which SB 31 repeals; (iii) adding new language requiring the State Fair Commission to appoint an executive director, with the advice and consent of the Senate, for one four-year term; (iv) providing that officers and employees of the State Fair shall be covered by and subject to the Personnel Act, unless the position is expressly permitted to be exempt by the Personnel Act; and (v) amending the manner in which the State Fair Commission exercises its existing powers.
- 5) SB 31, Section 5 amends Section 16-6-5 NMSA 1978 to make the State Fair Commission administratively attached to the Department of Cultural Affairs rather than the Tourism Department.
- 6) SB 31, Section 6 amends Section 16-6-6 NMSA 1978 (i) adding new language to require the State Fair Commission to hold quarterly meetings and additional meetings as deemed necessary by the chair of the commission; (ii) requiring the commission to provide an opportunity for public comment at commission meetings; and (iii) expressly making commission meetings subject to the Open Meetings Act.
- 7) SB 31, Section 7 amends Section 16-6-7 NMSA 1978 to provide that the annual \$5,000 state appropriation and the citizens of the City of Albuquerque's matching \$5,000 contribution are to be paid to the newly created state fair enterprise fund.
- 8) SB 31, Section 8 amends Section 16-6-13 NMSA 1978, (i) removing all references to bonds and (ii) making non-substantive language changes.
- 9) SB 31, Section 9 amends Section 16-6-14, (i) removing language stating that the State Fair is a body politic and corporate and separate and confirmed as a governmental

instrumentality and (ii) providing instead that the State Fair is a state agency, and the power of the state agency be exercised by the executive director or a majority of the commission.

- 10) SB 31, Section 10 amends Section 16-6-15 NMSA 1978, (i) eliminating the State Fair's right to acquire property by eminent domain; (ii) eliminating the authority of the State Fair to borrow money and issue bonds; and (iii) making stylistic changes.
- 11) SB 31, Section 11 enacts a new section of Chapter 16, Article 6 NMSA 1978 that creates and defines the duties of the executive director of the State Fair, which duties are subject to the "rules and policies of the State Fair Commission".
- 12) SB 31, Section 12 enacts a new section of Chapter 16, Article 6 NMSA 1978 that (i) creates the state fair enterprise fund as a non-reverting fund in the state treasury; (ii) directs all appropriations to and revenue of the State Fair to the fund; (iii) appropriates the fund to the State Fair; and (iv) provides that the fund shall be disbursed by warrant of the secretary of finance and administration pursuant to vouchers signed by the secretary and treasurer of the State Fair Commission or "their authorized representative," which reference should be amended as noted under "Amendments."
- 13) SB 31, Section 13 enacts a temporary provision that directs all money of the State Fair is be transferred and deposited into the state fair enterprise fund. This would seemingly include any money held in trust accounts, pursuant to the State Fair's contractual obligations to bond holders.
- 14) SB 31, Section 14 repeals the following statutes concerning the State Fair's current ability to borrow money and issue bonds: NMSA 1978, Sections 16-6-2 and 16-6-16 through 16-6-21. It also repeals Section 16-6-9 NMSA 1978, which requires the secretary of finance and administration to pay the annual \$5,000 state appropriation to the State Fair by warrant to the State Fair Commission treasurer.
- 15) SB 31, Section 15 makes the effective date of the provisions of SB 4 effective July 1, 2013.

## **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.

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.

There are no amendments to the amount of the existing \$5,000 standing appropriation from the state in Section 16-6-7 NMSA 1978. SB 31 only provides that this appropriation is to the state fair enterprise fund. SB 31 repeals existing law -- Section 16-6-9 NMSA 1978 -- that provides that the Secretary of Finance and Administration shall pay this appropriation by warrant to the State Fair Commission treasurer.

### **SIGNIFICANT ISSUES**

In its analysis, the DCA notes that:

If the State Fair becomes administratively attached to the DCA, the Executive Reorganization Act (NMSA 1978, §§ 9-1-1 to -13) provides that the State Fair would:

- a) continue to exercise its functions independently of DCA and without approval or control of the DCA,
- b) submit its budgetary requests through the DCA, and
- c) submit any reports required of the State Fair through the DCA.

The DCA would have to include the State Fair's budgetary requests, as submitted and without changes, in the DCA budget and could provide, if mutually agreed upon, the budgeting, record-keeping, and related administrative and clerical assistance to the State Fair. It is not clear if the State Fair's capital outlay requests would necessarily be submitted as part of the DCA's capital outlay request.

The State Fair would continue to hire its own personnel.

### **TECHNICAL ISSUES**

P14, L23 following the word "appropriated" insert "by the legislature".

JC/svb:bm