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## FISCAL IMPACT REPORT

SPONSOR Burt ORIGINAL DATE 02/11/15  
 LAST UPDATED 03/18/15 HB \_\_\_\_\_

SHORT TITLE Museum & Monument Board & Director SB 450/aSJC

ANALYST Cerny/Clark

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		
	Indeterminate	Indeterminate	Recurring	State Museums Improvements & Exhibits Fund
	(Indeterminate)	(Indeterminate)	Recurring	Cultural Affairs Department Operating Fund
	(Indeterminate)	(Indeterminate)	Nonrecurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

Conflicts with HB 227 Combine Cultural Affairs and Tourism Departments

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Department of Finance and Administration (DFA)

Department of Cultural Affairs (DCA)

Office of the Attorney General (AGO)

### SUMMARY

#### Synopsis of SJC Amendment

Senate Judiciary Amendment to Senate Bill 450 adds a clause to the title to the bill, “Authorizing the Historic Preservation Division to Charge Fees for Certain Services.”

SB 450/aSJC accomplishes this in Section 7 by adding new language to Section 18-6-8 NMSA 1978 which concerns the Historic Preservation Division (HPD). The HPD would now be charged with adopting and promulgating rules regulating the use of the division’s statewide historic and prehistoric site databases and archives, including a fee schedule to cover the

reasonable cost of their use. Further, fees collected would be used to maintain and administer the databases and archives.

The SJC amendment also strikes line 16 on page 4, making it clear that the Museum of New Mexico Board of Regents in establishing museum policy and determining the mission and directing the development of the museum is not subject to the approval of the secretary of DCA in such matters.

However, there is still no definition or explanation of what is meant by “direct the development of the museum” (see Technical Issues below). Additionally, the amendment allows the new HPD fees to be used to maintain and administer the database and archives but does not explicitly appropriate these fees to the agency.

### Synopsis of Original Bill

Senate Bill 450 proposes to amend several statutes relating to DCA and its divisions.

Section 1 amends the state museums improvements and exhibits fund by adding revenues from the licensure or sale of intellectual property to those earned revenues for which 15 percent is set aside to make improvements to museums and historic sites. This fund was established to provide incentives to museums to generate increased earned revenues, giving them the ability to use 15 percent of whatever they earn from certain categories of revenues to design new exhibits and to maintain and repair state museum facilities, instead of 100 percent of it going into DCA’s operating budget.

Section 2 clarifies that it is the Secretary of DCA who is a member of the State Commission of Public Records rather than the director of the Museum of New Mexico (MNM); this change is appropriate because there is no longer a director of the MNM. (Instead there are six divisions.) Sections 3-17 standardize the statutes governing the responsibilities of the Museum Division Directors and their governing Boards and Commissions for all of DCA’s museums and historic sites. The changes clarify respective responsibilities.

Section 18 recompiles the NMSA sections that create the six MNM divisions to place them in the same article as their MNM governing board, the “Board of Regents.” Section 18-3 will now cover all MNM statutes (some are currently in Section 9-4), making this organizational structure essentially the same as those of the Museum of Natural History and Science (MNHS) in 18-3A, the Museum of Space History Museum (MSH) in 18-7; the Farm and Ranch Heritage Museum (FRHM) in 18-1; and the National Hispanic Cultural Center (NHCC) in 18-12.

Additional specific changes:

- Section 8 establishes qualifications for the Director of MSH in Alamogordo, and adds language that the appointment of the director by the DCA Secretary must have approval of the governor. This brings the MSH in line with other DCA museums.
- Section 9 removes the DCA cabinet secretary as a member of the FRHM’s governing board, and replaces that seat with a member of the public appointed by the governor. This brings the FRHM Board in line with other museum boards.
- Sections 13 and 17 establish Wednesdays as free admissions days for seniors for the FRHM and the NHCC, respectively, bringing them in line with the other DCA museums

and Historic Sites.

- Sections 14C and 15B include a provision for two members of NHCC governing board of trustees to be appointed *by* its private non-profit foundation. It also provides that two members of the board of trustees will be appointed *to* the board of the private non-profit foundation

## **FISCAL IMPLICATIONS**

SB 450 carries no appropriation; however, it provides for revenues which would otherwise revert to the general fund, or be used to support the department’s operating budget, to be deposited in a non-reverting fund earmarked for exhibits. The bill adds “revenues earned from licensure or sale of intellectual property” to the “state museums and improvements fund.” Such revenues, though indeterminate, might become significant over time if for example the extensive photographic collections and manuscripts were licensed, or if new products were to be developed from the collections such as toys, clothing items, or gifts. The MNM Foundation currently handles most licensing for the MNM divisions.

This bill earmarks additional sources of revenue to an existing fund with continuing appropriation authority. LFC has concerns with including continuing appropriation language in the statutory provisions, as earmarking reduces the ability of the legislature to establish spending priorities.

By diverting a portion of the revenues from the licensure or sale of intellectual property from the agency’s operating budget, this creates an indeterminate negative budget impact on the operating budget and on general fund revenues, which may be required to fill the gap that is created.

The bill expands free admission for seniors to include two more museums. Loss of admission revenue could impact operating revenues and increase the need for more general fund support in future years.

## **SIGNIFICANT ISSUES**

Currently, different museums and historic sites divisions in DCA have different criteria for basic operating functions utilized on ongoing basis (for example, some require the Secretary’s approval to enter into a contract; others don’t). There is no discernible basis for these differences, except that various statutes were enacted over a long period of time and divisions had differing governance and other structures at the time they became part of DCA.

For example, in sections 3C, current statute states that the Museum of NM board should “solicit and receive” funds; whereas, in actuality, the board should “solicit” funds but it is the division that “receives” the funds. All museum director and board duties across DCA will now be the same, which will make it simpler for legal review and administrative processes.

The bill does not change the distinct qualifications required for each division director, except to establish the qualifications for the MSH director.

The bill does not change the current methods by which officers of the boards are designated though the way board appointments are conducted still is not consistent across the divisions.

Section 14 also reduces the number of appointees to the NHCC that the governor appoints, from

15 to 13. It provides that two of the 15 board members will be designated as “private members” and appointed by the non-profit with an operating agreement with the center, (at this time, the NHCC Foundation). The remaining 13 members appointed by the governor are designated as “public” members.

This follows the structure of the board of the MNHS, set out in Section 18-3A-5(A-2) NMSA 1978 except that the MNHS statute specifically names the MNHS Foundation whereas the amendment to the NHCC statute specifies only “the non-profit with an operating agreement with the center.” This would suggest that a different non-profit could take over the role of the NHCC Foundation at some point in time.

According to AGO analysis, the requirement in Section 14 that the “original appointing authority” appoint another board member in the event of a vacancy may run afoul to the governor’s appointment authority under Article 5, Section 5 of the New Mexico Constitution.

### **PERFORMANCE IMPLICATIONS**

DCA analysis suggests that such differences in statutes that dictate operational matters delay efficiency in administrative processing because procedures are inconsistent and not clear across the department. This bill will rectify those discrepancies and lead to greater efficiencies.

### **CONFLICT**

Conflicts with HB 227 which amends some of the same sections amended in SB 450.

### **TECHNICAL ISSUES**

The phrase “direct the development” of the museum in Section 3B is not defined and the meaning of “development” is not clear. Does it refer to fundraising specifically, as that term is commonly used in the nonprofit sector? Or, to future realization of potential? Or both?

AGO analysis points out that the terms “nonprofit organization” and “operating agreement” in Section 14C are not defined, and “original appointee authority” referenced in Section 14E is not clear and needs a definition.

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