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**BILL ANALYSIS**

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Senate Bill 1130 (Substitute S-4 as passed by the Senate)

Sponsor: Senator Cameron S. Brown

Committee: Agriculture, Forestry and Tourism

Date Completed: 7-16-04

**RATIONALE**

The Michigan State Fair was the first state fair in the United States, and has been staged at its present location at 7 1/2 Mile and Woodward in Detroit for 99 years. Since 1978, the Fair's official purpose, as stated in the Michigan Exposition and Fairgrounds Act, has been to "promote all phases of the economy of the state". The Act provides that the State Fair and its exhibits or events "shall encourage and demonstrate agricultural, industrial, commercial, and recreational pursuits". The Fair is expected to pay for itself with profits earned from the annual fair held in August and from other activities, such as trade exhibitions, dog and horse shows, and concerts, that take place on the grounds during the off-season. If the Fair and its other events fail to net a profit, however, the State's General Fund is responsible for the shortfall.

The Fair has struggled to support itself since the 1960s, although it did have a positive balance in fiscal years 1998-99, 2000-01, and 2001-02. In fiscal year 2002-03, however, the Fair was unprofitable, reportedly because of the August 2003 electrical blackout. According to the Fair manager, the Fair's buildings have not been updated since 1950, and he is only able to keep one full-time, year-round maintenance worker on staff.

Responsibility for the Fair has been transferred from state department to state department several times since 1965: from the Michigan Department of Agriculture (MDA) to the Department of Natural Resources (DNR) in 1978, then to the Department of Commerce in 1993, and then back to the MDA in 1998. Because the

department that houses the Fair often must take money from its other programs to make up for some of the Fair's revenue shortfalls, responsibility for the Fair can become a burden on that department. This is true for the MDA, which could experience a 39.3% decline from its FY 2000-01 General Fund budget to the budget proposed for FY 2004-05.

Various ideas to improve the Fair's profitability have been raised. Some have suggested that the Fair be moved from Detroit to a more central, agricultural area, such as Ingham County. Others have proposed that events such as horse racing and auto racing be staged on the grounds during the off-season. In 2000, a development group proposed to buy property adjacent to the fairgrounds, lease the fairgrounds, and build an entertainment complex on the grounds. (Please see **BACKGROUND** for more information on this proposal and the resulting litigation.) Recently, it was suggested that most of the fairgrounds be turned into a Metro Park.

In 2003, Governor Granholm appointed a commission to study and recommend changes to the Fair and its management. The Wood-McInerney Commission, named for its chairs, published its report in February 2004. The Commission made a number of recommendations regarding the Fair's governance, year-round use of the fairgrounds, and its profitability. The Commission report stated, "[T]here is a need for more clarity in administration and management". Currently, the Fair is managed by the State Exposition and Fairgrounds Council, which serves as an advisory body to the MDA and the Fair

manager. (Both the manager and the members of the Council are appointed by the Governor.) The Commission recommended, among other things, that the Governor continue to appoint the Fair manager; that the Governor appoint a State Fair Authority with ultimate responsibility for the policy, budgeting, and management of the Fair; and that the new Authority be housed in the Department of Management and Budget for administrative purposes only.

## **CONTENT**

**The bill would amend the Michigan Exposition and Fairgrounds Act to do the following:**

- **Create the State Exposition and Fairgrounds Authority within the Department of Management and Budget (DMB).**
- **Transfer to the Authority responsibilities of the Michigan Department of Agriculture related to the management of the State Exposition and Fairgrounds.**
- **Provide for an Authority board, which would replace the State Exposition and Fairgrounds Council.**
- **Require that members of the Authority board represent agricultural interests, Fair exhibitors, tourism, the general public, organized labor, the business community, and county fairs.**
- **Provide for a manager of the Authority (rather than of the State Exposition and Fairgrounds), and expand his or her responsibilities.**
- **Require the Authority to submit to the Governor and the Legislature each year a rolling five-year operational plan and construction plan.**
- **Prohibit the Authority from conducting or allowing gaming (except as currently allowed under the Act), horse racing or wagering, or motorized vehicle racing while the State Fair was not being conducted.**
- **Require the Authority to establish a local neighborhood advisory council for the purpose of gathering public input on the Authority's activities.**

The bill would take effect on October 1, 2004.

## **Authority Creation**

Under the Act, the State Exposition and Fairgrounds Council is established within the MDA. Under the bill, the State Exposition and Fairgrounds Authority would be created as a public body corporate within the DMB. The Authority would be administered under the DMB's supervision but would exercise its powers and functions independently of the Department.

The activities, powers, duties, functions, responsibilities, and rule-making authority of the MDA related to the management of the State Exposition and Fairgrounds would be transferred to the Authority by a Type I transfer. (A Type I transfer, under the Executive Organization Act, transfers an existing board, commission, or other agency intact to a principal department. The board, commission, or agency must exercise its duties and functions of rule-making, licensing, and registration independently of the head of the department, and its budgeting, procurement, and related management functions must be performed under the direction and supervision of the head of the department.)

All records, personnel, property, grants, and unspent balances of appropriations, allocations, and other funds used, held, or available to the MDA for the activities, powers, functions, and duties transferred to the Authority, also would be transferred.

## **Authority Duties & Functions**

Under the Act, the MDA is responsible for conducting an annual State Fair and other exhibits or events for the purpose of promoting all phases of the State economy. The Act requires the fair and exhibits or events to encourage and demonstrate agricultural, industrial, commercial, and recreational pursuits. The bill would add educational, entertainment, tourism, technological, and cultural pursuits.

The Act requires the MDA to lease the fairgrounds and rent out the use of the buildings and grounds where appropriate, and enter into contracts to conduct the Fair, exhibits, or other events. The bill would transfer these responsibilities to the Authority.

Currently, the control of all land and other property held or acquired by the State for the purpose of holding and conducting the State Fair (excluding the Upper Peninsula State Fair) is vested in the MDA; under the bill, control of land and property would be vested in the Authority. Like the MDA, the Authority could enter into contracts to conduct the Fair, exhibits, or other events at the fairgrounds. Under the bill, these contracts would be subject to the requirements of the Management and Budget Act.

Annually, the MDA must present to the Governor, the Legislature, and the State Exposition and Fairgrounds Council, a report describing the receipts or expenditures that have a material bearing on the operation of the State Fair and fairgrounds. Under the bill, the Authority would have to present the same report to the Governor, the Legislature, and the DMB.

The bill would permit the Authority, rather than the MDA, to enter into licensing agreements with concessionaires permitting games of skill, and to promulgate rules governing the conduct of the State Fair. Any rules in effect on the bill's effective date would remain in effect until rescinded.

The bill would permit the Authority to enter into cooperative agreements, contracts, or other agreements with one or more governmental entities to use their personnel, services, or facilities in order to assist the Authority with carrying out its duties. The Authority also could contract with the DMB for the purpose of maintaining and improving the rights and interests of the Authority.

The Authority could employ legal and technical experts and other officers, agents, or employees, paid from Authority funds. It would have to determine employees' qualifications, duties, and compensation, but an employee could not be paid a higher salary than the manager was paid.

#### Prohibited Activities

During the time when the annual State Fair was not being conducted, and except as currently allowed under the Act, the Authority would be prohibited from conducting or allowing gaming, horse racing

and wagering, and outdoor automobile or other motorized vehicle racing.

#### Authority Board

Creation & Membership. Currently, the State Exposition and Fairgrounds Council consists of the Directors of the MDA and the DNR, or their representatives, and nine members appointed by the Governor and with the advice and consent of the Senate. Not more than five of the appointed members may be members of the same political party. Of the appointed members, three must represent the agriculture industry; one must represent labor; two, business; and one, the travel industry. The remaining two members must be from the general public. Each member's term of office is three years.

The bill would delete reference to the Council and its membership. Under the bill, the Authority would be governed by an Authority board. The board would consist of the Directors of the DMB and MDA (or their designees) who would serve as ex officio voting members, and nine members appointed by the Governor with the advice and consent of the Senate. Not more than five of the appointed members could belong to the same political party. The term of office would remain three years, but, of the members first appointed, three would serve for one year, three for two years, and three for three years. As currently provided for the Council, the Directors of the Departments would be prohibited from serving as Authority officers.

The current Council would be abolished October 1, 2004. The terms of the newly appointed members would begin on that date. Council members would be eligible for appointment if otherwise qualified.

The nine voting members would have to be chosen from the following categories:

- Three representatives of agricultural interests, one of whom would have to be a Fair exhibitor.
- One member representing the tourism industry in Michigan.
- Two members of the general public.
- One representative of organized labor.
- One representative of the business community.
- One representative of county fairs.

The bill states, "It is the intent of the legislature that members of the board represent all geographic areas of the state." Of the nine appointed members, at least one from any category would have to be a resident of each of the following: Detroit, Ferndale, and Hazel Park.

Regardless of the cause of a vacancy on the board, the Governor would have to fill the vacancy by appointment by and with the advice and consent of the Senate. A vacancy would be filled for the balance of the unexpired term.

Currently, Council members are supposed to be paid a per diem compensation and receive reimbursement of expenses. Under the bill, Authority board members would serve without compensation but would receive reimbursement for actual and necessary expenses, subject to available appropriations.

Members of the board and officers and employees of the Authority would be subject to Public Act 317 of 1968 (which governs contracts between public servants and public entities). A board member or Authority officer or employee would have to discharge the duties of his or her position in a nonpartisan manner, with good faith, and with that degree of diligence, care, and skill that an ordinarily prudent person would exercise under similar circumstances.

Currently, the Council selects a chairperson and other officers. Under the bill, the Governor would have to designate a board member to serve as its chairperson at the pleasure of the Governor. The board would have to select other officers from its voting membership annually.

As provided for the Council, the board would be subject to the Open Meetings Act and the Freedom of Information Act. The board could adopt bylaws and policies and procedures for conducting its business.

Responsibilities. The bill would require the board, except as otherwise provided in the Michigan Exposition and Fairgrounds Act, to do all things necessary or convenient to implement the purposes, objectives, and powers delegated to the Authority by other laws or executive orders. The board would be required to do at least all of the following:

- Review and approve policies, including dates for the Fair and the budget.
- Develop and submit to the DMB, the Legislature, and the Governor on a yearly basis, a rolling five-year operational plan and construction plan, including a master plan for the use of buildings and grounds.

Under the Act, the Council is charged with advising the MDA Director, the Legislature, and the Governor on the operating budget, capital improvements, programs, exhibits, and other matters relevant to the State Fair. Under the bill, the board would have to report to the DMB Director, the Legislature, and the Governor on these matters.

Currently, the Council must advise the MDA Director on the selection of a Fair manager. Under the bill, in the event of a vacancy in the office of manager, the board would have to recommend two or more candidates to the Governor.

The Council also must advise the MDA Director about the use of the State fairgrounds. The bill would require the board to approve the use of the fairgrounds.

Neighborhood Advisory Council; Newsletter. As is currently required of the Council, the Authority board would have to meet at least four times per year. At least one of these meetings would have to be dedicated to soliciting input from the local neighborhood advisory council, which the Authority would have to establish for the purpose of gathering public input on the Authority's activities. The minutes of its board meetings would have to be posted on the Authority's website. Also, the Authority would have to develop a newsletter to be published at least twice per calendar year for residents of the area surrounding the State Exposition and Fairgrounds.

#### Manager

The Act requires the Governor to appoint a manager of the State Exposition and Fairgrounds, who is directly responsible to the MDA. Under the bill, the Governor would have to appoint a manager of the Authority, who would serve at the pleasure of the Governor and would be directly responsible to the Authority. The person serving as manager on September 30, 2004, would continue to serve as the manager at the pleasure of the Governor.

Currently, the manager receives compensation determined annually by the Legislature. Under the bill, his or her compensation would be determined by the Authority.

The Act requires the manager to administer the business operations of the State Fair; under the bill, he or she also would have to administer the business operations of the Authority. As currently provided, the manager would be the chief administrative officer for the management and operation of the State Exposition and Fairgrounds and could enter into contracts and leases; under the bill, these contracts and leases would be subject to the requirements of the Management and Budget Act. Also as currently provided, the manager would be responsible for the financial operation of the State Fair; would have to develop ideas and programs to enhance Fair operations; and would be responsible for preparing the annual Fair budget.

The bill also would require the manager to develop and present to the Authority board for its approval each of the following:

- A financial plan submitted annually.
- A rolling five-year operations plan submitted every five years.
- A facility and utility renovation plan.
- A long-range master plan for Authority facilities and the State Exposition and Fairgrounds.

The renovation plan and the master plan would have to be updated as determined by the manager or as requested by the board.

#### Fund

The Act created the State Exposition and Fairgrounds Fund in the State Treasury. The Fund consists of money generated from the operation of activities under the Act and money appropriated from the General Fund. Upon appropriation, money in the Fund is spent by the MDA Director, with the advice of the Council, to provide for an annual State Fair, to maintain the State Exposition and Fairgrounds, and as needed by the MDA to carry out its responsibilities under the Act. Under the bill, the Authority would have to administer the Fund and use the money for the same purposes, but the money would have to be spent in the following order of priority: 1) providing for the State

Fair; 2) maintaining the State Exposition and Fairgrounds; and 3) any other purpose authorized under the Act. The bill would delete reference to money appropriated from the General Fund.

Under the Act, the MDA must submit an annual report to the Legislature and the Council showing the amount of money received under the Act and how the money was spent. Under the bill, the Authority would have to submit the report to the Legislature and the DMB.

#### Audit

Currently, the Auditor General annually must audit the books and records of the State Fair. The bill, instead, states that the Authority would be subject to annual post audits of its financial transactions and accounts and to performance post audits by the Auditor General.

#### Demolition

Under the Act, the MDA may demolish or permit the demolition of any building or structure on the State Exposition and Fairgrounds that the MDA Director determines to be unsuitable for uses consistent with the Fair. Under the bill, the Authority could order the demolition of a building if it determined the structure to be unsuitable for Fair use.

MCL 285.161 et al.

#### **BACKGROUND**

In April 2000, the State agreed to sell a 36-acre parcel of land adjoining the fairgrounds to the State Fair Development Group (SFDG) for \$6.1 million. (During the years when the Department of Natural Resources was responsible for the Fair, the DNR gradually acquired this property with money from the Natural Resources Trust Fund, with the intent to use it as a campground for Fair exhibitors.) The agreement with the SFDG provided that the parcel would become subject to certain local ordinances and regulations, including zoning and taxation, to which it was not subject when it was owned by the State. The State also agreed to lease the State fairgrounds to SFDG for 30 years, with an opportunity to renew at the end of that period. The lease terms included a provision to develop the

fairgrounds and the adjoining parcel in accordance with a master plan attached to the lease. The master plan included the building of an auto racing facility (possibly to host the Grand Prix race), a large outdoor amphitheater, an equestrian center, a convention center, a livestock barn, and a community arts center. The lease also contained a requirement that SFDG comply with all applicable laws, including zoning ordinances.

In May 2000, the Detroit City Council adopted a resolution opposing the racetrack because of an anticipated nuisance. The Cities of Detroit, Huntington Woods, Ferndale, and Pleasant Ridge, as well as a number of neighborhood associations and individual residents, then sued the State to halt the racetrack on the ground that it would violate Detroit's zoning ordinance, and because the racetrack and amphitheater would be a nuisance and a violation of the Natural Resources and Environmental Protection Act. The trial court denied the State's motion for summary judgment dismissing the lawsuit. The court held that, in the context of its contract with SFDG, the State had to comply with Detroit's zoning ordinance. The State appealed that decision.

Reportedly because of neighborhood opposition to the racetrack, SFDG contracted to sell the 36-acre parcel to another developer at a \$4.4 million profit. In January 2001, that developer then agreed to sell the parcel to the Detroit Public Schools for \$17 million. The State ultimately halted the sale of the parcel because it claimed that the sale was contingent on SFDG's developing the land to benefit the rest of the fairgrounds, and because SFDG later failed to meet a deadline to close on the sale.

On June 22, 2004, the Court of Appeals ruled that the State fairgrounds is under the exclusive control of the MDA and therefore the State does not have to follow local zoning ordinances (*City of Detroit, et al. v State of Michigan, et al*, No. 240174). In its opinion, the Court cited the Michigan Exposition and Fairgrounds Act, which states, "The control of all land and other property held or acquired by the state for the purpose of holding and conducting agricultural and industrial fairs and exhibitions is vested in the department" (MCL 285.165). Therefore, the 36-acre

parcel, because it is still owned by the State, is exempt from local zoning ordinances, as is the rest of the Fairgrounds.

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

The bill would implement many of the Wood-McInerney Commission's recommendations, which resulted from citizen and legislative input. Most significantly, the bill would create an independent authority that would have ultimate responsibility for the Fair. The Authority, therefore, could be more responsive and accountable, two qualities the current Council lacks because it serves only in an advisory capacity.

The Commission also recommended that the Authority create an annual financial plan, a five-year operations plan, a facility and utility renovation plan, and a long-range master plan for the facilities and grounds. The bill would require the Authority to develop a rolling five-year operational plan and construction plan, including a master plan for the use of buildings and grounds. These plans should provide some continuity and vision for an operation that historically has had to limp from year to year in an attempt to come out in the black.

The Commission also recommended that a variety of interests be represented on the Authority, including those from agriculture, Fair exhibitors, and county fairs; the bill would provide for this. Thus, the most interested parties would be represented at the table when decisions about State Fair policy and programs were made.

Further, moving the State Fair to the Department of Management and Budget would help the MDA, which has less money to draw upon if the Fair comes up short. The move would fit the general purpose of both Departments, as the MDA is focused on supporting agriculture, and the DMB, on management.

**Response:** The bill would not provide for a stable funding mechanism for the Fair. The Commission recommended that the Authority have the capacity to issue bonds, and a previous version of the bill would have permitted the Authority to do so. It is vital

that Fair facilities be improved; failed air conditioning systems, restrooms in disrepair, and inadequate parking all hinder the Fair's ability to attract patrons and generate enough revenue to support itself. Because agriculture is Michigan's second largest industry, and because it is the mission of the Fair, in part, to promote the State's agriculture, and because the Fair is the nation's oldest, it does the people of the State a disservice to neglect property that was given to them for their enjoyment and enrichment. Unless the Fair is self-supporting, at least the State should commit to funding it. Several other successful Midwestern states provide from \$600,000 to \$6 million in state support to fund their fairs. Michigan should follow their example.

### **Opposing Argument**

Although the bill would prohibit auto and horse racing and gambling on the fairgrounds while the Fair is not being conducted, it also should require that activities conducted on the fairgrounds adhere to local zoning ordinances. Because many residential neighborhoods surround the fairgrounds, any activity conducted in their midst should respect local rules. In light of the recent Court of Appeals decision upholding the State's exemption from local ordinances, it is important to place this provision in statute. Under the bill, it is still possible that loud concerts could take place on the fairgrounds during the Fair's off-season. Musical performances lasting late into the night would greatly disturb the community peace.

Further, even though the bill would require the Authority to form a neighborhood advisory group, require at least one Authority meeting to be devoted to community concerns, and require the Authority to publish a newsletter informing local residents about Fair developments, the bill nonetheless would fail to guarantee community members any sway with State officials. In fact, creating an independent Authority could result in a body with more State power and less oversight, compared with the current Council. Making room for additional neighborhood representatives on the Authority could provide more power to local residents who are affected most by Fair developments.

**Response:** Requiring the State to adhere to local zoning ordinances would set an unwelcome precedent, and could limit the State's future attempts to make the Fair profitable. Further, the bill would establish a channel for local input, which would be an improvement over the current system.

Legislative Analyst: Claire Layman

### **FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

The State Exposition and Fairgrounds (State Fair) receives appropriations in the annual MDA budget to cover its operations. These appropriations are supported from revenue generated at the State Fair from events held throughout the year. Nearly all of the revenue generated by the State Fair accrues during the annual Michigan State Fair held in late August. The State Fair is accounted for in the General Fund, which means that if it does not generate sufficient revenue to cover all of its expenses, the General Fund is responsible for the shortfall. The table below shows revenue received by the State Fair, annual expenses, and General Fund assistance provided to the State Fair for the past seven fiscal years, FY 1996-97 through FY 2002-03.

During four of the past seven fiscal years, the State Fair required General Fund appropriations to cover its expenses. In FY 2002-03, the State Fair lost \$746,700. This shortfall was made up by a transfer from various accounts within the MDA budget (\$255,200) and a transfer from various accounts within the DMB budget (\$491,800). In FY 1999-2000, the shortfall was made up by a one-time transfer of \$1,250,000 from the Bovine Tuberculosis Program within in the MDA budget.

<b>Michigan State Fair Financial History</b> <b>Fiscal Year Ending September 30</b> <b>(thousands)</b>							
	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>
Revenue	\$6,078.7	\$6,684.3	\$6,614.8	\$6,789.5	\$5,350.0	\$4,953.1	\$5,047.3
Expenses	(6,880.3)	(7,322.1)	(6,604.0)	(7,932.2)	(5,265.3)	(4,868.4)	(5,794.0)
Income (Loss)	(801.6)	(637.8)	10.8	(1,142.7)	84.7	84.7	(746.7)
GF/GP Transfer	885.0	707.0		1,250.0			747.0
Income (Loss) After Transfer	83.4	69.2	10.8	107.3	84.7	84.7	0.3

Fiscal Analyst: Craig Thiel

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.