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Senate Bill 1130 (as enrolled)

**PUBLIC ACT 468 of 2004**

Sponsor: Senator Cameron S. Brown

Senate Committee: Agriculture, Forestry and Tourism

House Committee: Agriculture and Resource Management

Date Completed: 3-31-05

### **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 100 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 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.

Responsibility for the Fair has been transferred from one State department to another 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 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.

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: a proposal that resulted in litigation (as described in **BACKGROUND**, below). More 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". Until now, the Fair was managed by the State Exposition and Fairgrounds Council, which served as an advisory body to the MDA and the Fair manager. The Commission recommended, among other things, that the Governor appoint a State Fair Authority with ultimate responsibility for the policy, budgeting, and management of the Fair; that the new Authority be housed in the Department of Management and Budget for administrative purposes only; and that the Governor continue to appoint the Fair manager.

## **CONTENT**

**The bill amended 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 the appointment of the Authority board, in place of the State Exposition and Fairgrounds Council.**
- Provide for a manager of the Authority (rather than of the State Exposition and Fairgrounds), and require him or her to submit financial, operations, and renovation plans to the board.**
- Require the Authority board to submit to the Governor and the Legislature each year a rolling five-year operational plan and construction plan.**
- Require the Authority to establish a local neighborhood advisory council.**

**The bill also made an appropriation from the State Exposition and Fairgrounds Fund for fiscal year (FY) 2003-04, and an appropriation from the General Fund for FY 2004-05.**

The section of the bill making appropriations took effect on December 28, 2004. The remainder of the bill took effect on March 1, 2005.

### **Authority Creation**

Previously, the Act established the State Exposition and Fairgrounds Office within the MDA. The bill, instead, creates the State Exposition and Fairgrounds Authority as a public body corporate within the DMB. The Authority must be administered under the DMB's supervision but exercise its powers and functions independently of the Department.

Under the bill, the activities, powers, duties, functions, responsibilities, and rule-making authority of the MDA related to the management of the State Exposition and

Fairgrounds are transferred to the Authority by a Type I transfer. The bill also transfers to the Authority 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, duties, functions, and responsibilities.

(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.)

### **Authority Duties & Functions**

Under the bill, the Authority, rather than 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 fair and exhibits or events must encourage and demonstrate agricultural, industrial, commercial, and recreational pursuits as well as, under the bill, educational, entertainment, tourism, technological, and cultural pursuits.

The bill requires the Authority, rather than 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.

Under the bill, 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 Authority, rather than the MDA. As the MDA could, the Authority may enter into contracts to conduct the Fair, exhibits, or other events at the fairgrounds. Under the bill, these contracts are subject to the requirements of the Management and Budget Act.

Previously, the MDA had to present to the Governor, the Legislature, and the State Exposition and Fairgrounds Council, a report describing the receipts or expenditures having a material bearing on the operation

of the State Fair and fairgrounds. Under the bill, the Authority must present the same report to the Governor, the Legislature, and the DMB.

The bill permits 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 are to remain in effect until rescinded.

The bill also permits 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 may contract with the DMB for the purpose of maintaining and improving the rights and interests of the Authority.

In addition, the Authority may employ legal and technical experts and other officers, agents, or employees, paid from Authority funds. It must determine employees' qualifications, duties, and compensation, but an employee may not be paid a higher salary than the manager is paid.

#### Authority Board

Creation & Membership. Previously, the State Exposition and Fairgrounds Council consisted 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. The Act required that three of the appointed members represent the agriculture industry; one represent labor; two, business; and one, the travel industry. The remaining two members had to be from the general public.

The bill abolished the Council. Under the bill, the Authority is to be governed by a board consisting of the Directors of the DMB and the MDA (or their designees), who will serve as ex officio voting members, and nine members appointed by the Governor with the advice and consent of the Senate. Council members are eligible for appointment if otherwise qualified. As previously provided, not more than five of the appointed members may belong to the same political party and the term of office is three years. Of the members first appointed, however, three must serve for

one year, three for two years, and three for three years. The terms of the newly appointed members were to begin on March 1, 2005.

Under the bill, the nine appointed members must be chosen as follows:

- Three members representing agricultural interests.
- 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 authority board represent all geographic areas of the state."

Under the bill, regardless of the cause of a vacancy on the board, the Governor must fill the vacancy by appointment by and with the advice and consent of the Senate. A vacancy is to be filled for the balance of the unexpired term.

The Act previously provided for Council members to be paid a per diem compensation and receive reimbursement of expenses. Under the bill, Authority board members must serve without compensation but receive reimbursement for actual and necessary expenses, subject to available appropriations.

The bill provides that members of the Authority board and officers and employees of the Authority are subject to Public Act 317 of 1968 (which governs contracts between public servants and public entities). A board member or Authority officer or employee must 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.

Previously, the Council selected a chairperson and other officers. Under the bill, the Governor must designate a member of the board to serve as its chairperson at the pleasure of the Governor. The board must select other officers from its voting membership annually. As provided for the

Council, the Department Directors may not serve as officers.

Like the Council, the board is subject to the Open Meetings Act and the Freedom of Information Act. The board may adopt bylaws and policies and procedures for conducting its business.

Responsibilities. The bill requires the Authority 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 provisions of the Act and the purposes, objectives, and powers delegated to the Authority by other laws or executive orders. The board must 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.
- Report to the DMB Director, the Legislature, and the Governor on the operating budget, capital improvements, programs, exhibits, and other matters relevant to the State Fair.
- Approve or authorize the manager to approve use of the fairgrounds.
- Promote, encourage, and assist the manager in conducting exhibits or other events at the fairgrounds.

(The former Council had been 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; advising the MDA Director on the selection of a Fair manager, and about the use of the State fairgrounds; promoting, encouraging, and assisting the Director and the manager in conducting exhibits or other events at the fairgrounds; and performing other functions the Director or the manager requested.)

As required of the Council, the Authority board must meet at least four times per year. The bill requires that the minutes of board meetings be posted on the Authority's website.

Neighborhood Advisory Council; Newsletter. The bill requires the Authority to establish a

local neighborhood advisory council for the purpose of gathering public input on the Authority's activities. At least one of the Authority board's four yearly meetings must be dedicated to soliciting input from this council.

The bill also requires the Authority to develop a newsletter to be published at least twice per calendar year for residents of the area surrounding the fairgrounds. The Authority must make the newsletter available electronically on its website and, if requested, by mail.

#### Manager

The Act previously required the Governor to appoint a manager of the State Exposition and Fairgrounds, who was directly responsible to the MDA and received compensation determined annually by the Legislature. Under the bill, the Governor must appoint a manager of the Authority, who will serve at the pleasure of the Governor and is directly responsible to the Authority. The manager is to receive compensation determined annually by the Authority. The bill requires the person serving as manager on February 28, 2005, to continue to serve at the pleasure of the Governor.

Under the bill, the manager must administer the business operations of the State Fair, as previously required, and of the Authority. As before, the manager is the chief administrative officer for the management and operation of the State Exposition and Fairgrounds and may enter into contracts and leases. Under the bill, these contracts and leases are subject to the requirements of the Management and Budget Act. As previously provided, the manager is responsible for the financial operation of the State Fair; must develop ideas and programs that enhance Fair operations; and is responsible for preparing the annual Fair budget.

The bill also requires 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 annually.
- 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 must be updated as determined by the manager or as requested by the board.

#### Audit

The Act had required the Auditor General annually to audit the books and records of the State Fair. The bill, instead, states that the Authority is subject to annual post audits of its financial transactions and accounts and to performance post audits by the Auditor General.

#### Fund

The Act created the State Exposition and Fairgrounds Fund in the State Treasury, and provides that money generated from the operation of activities authorized by the Act must be deposited into the Fund. Previously, money appropriated from the General Fund for the State Fair that was unencumbered and unspent at the close of the fiscal year also had to be deposited into the Fund; the bill deleted that provision.

The bill requires the Authority to administer the Fund and, upon appropriation, spend the money in the following order of priority: providing for an annual State Fair, maintaining the State Exposition and Fairgrounds, and any other purpose authorized in the Act. (Previously, upon appropriation, money in the Fund was spent by the MDA Director, with the advice of the Council, for the same purposes.)

The bill requires the Authority to submit to the Legislature and the DMB an annual report showing the amount of money received under the Act and how the money was spent. (Before, the MDA had to submit the annual report to the Legislature and the Council.)

#### Appropriations

For the 2003-04 fiscal year, the bill appropriated \$625,000 from the State Exposition and Fairgrounds Fund for Michigan State Fair payment of premiums to exhibitors and for payments due to vendors and others regarding outstanding invoices for the annual State Fair held in calendar

year 2004. The bill required that payment for premiums to exhibitors be made before payment to vendors and others.

For FY 2004-05, the bill appropriated \$192,700 from the General Fund to Lake Superior State University for an infrastructure, technology, equipment, and maintenance grant.

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 was under the exclusive control of the MDA and therefore the State did not have to follow local zoning ordinances (*City of Detroit, et al. v State of Michigan, et al.*, 262 Mich App 542). In its opinion, the Court cited the Michigan Exposition and Fairgrounds Act, which stated, "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 implements many of the Wood-McInerney Commission's recommendations, which resulted from citizen and legislative input. Most significantly, the bill creates an independent authority that has ultimate responsibility for the Fair. The Authority, therefore, should be more responsive and accountable than the Council was, because it served 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 requires 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.

In addition, the Commission recommended that a variety of interests be represented on the Authority board, including agriculture and county fairs; the bill requires that particular members represent these and other interests. Thus, the most concerned parties will be at the table when decisions about State Fair policy and programs are made.

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

**Response:** The bill fails to 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. According to the Fair manager, the Fair's buildings have not been updated since 1950, and only one full-time, year-round maintenance worker has been on staff.

Because agriculture is Michigan's second largest industry, 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 their fairs.

### **Opposing Argument**

The law should prohibit auto and horse racing and gambling from being conducted

on the fairgrounds during the off-season, as well as 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 June 2004 Court of Appeals decision upholding the State's exemption from local ordinances, it is important to place these provisions in statute.

Further, even though the bill requires the Authority to form a neighborhood advisory group, devote at least one board meeting a year to community concerns, and publish a newsletter, the bill nonetheless fails to guarantee community members any sway with State officials. In fact, compared with the former Council, an independent Authority might have more power and less oversight.

**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 establishes a channel for local input, which is an improvement over the previous system.

Legislative Analyst: Claire Layman  
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## **FISCAL IMPACT**

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

The State Exposition and Fairgrounds (State Fair) has received appropriations in the annual MDA budget to cover its operations. These appropriations have been 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 eight fiscal years, FY 1996-97 through FY 2003-04.

During four of the past eight 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>	<b>2004</b>
Revenue	\$6,078.7	\$6,684.3	\$6,614.8	\$6,789.5	\$5,350.0	\$4,953.1	\$5,047.3	\$6,068.8
Expenses	(6,880.3)	(7,322.1)	(6,604.0)	(7,932.2)	(5,265.3)	(4,868.4)	(5,794.0)	(5,797.1)
Income (Loss)	(801.6)	(637.8)	10.8	(1,142.7)	84.7	84.7	(746.7)	289.6
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	289.6

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.