

LFC Requester:	Noah Montano
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AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO
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(Analysis must be uploaded as a PDF)

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: 2-6-2025 *Check all that apply:*
Bill Number: HB 241 Original Correction
 Amendment Substitute

Sponsor:	Alan Martinez	Agency Name and Code	
	Rebecca Dow		
Short Title:	Art De La Cruz	Number:	NM Gaming Control Board 00465
	<u>Gaming Act Definition Changes</u>		Person Writing
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$2.0 - \$3.0			Nonrecurring	Operating

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

House Bill 241 proposes adding two new definitions to Section 60-2E-3 NMSA 1978 (being Laws 1997, Chapter 190, Section 5, as amended).

The first proposed addition, identified as new Paragraph C, proposes adding the term “allowable gaming expenses” and a definition for this term.

The second proposed addition, identified as new Paragraph G, proposes adding the definition of “balance of net take”.

Prior to the 2023 Legislative Session, the term “allowable gaming expenses” did not exist in the Gaming Control Act. It was a concept created by the agency and included in rule 15.1.10.7(G) of the New Mexico Administrative Code (“NMAC”). In 2015, the Gaming Control Board stopped using “allowable gaming expenses” in the distributions largely at the request of several nonprofit organizations. Because the term had essentially become obsolete, it was determined that it should be removed from the NMAC.

With the passage of HB 253 by the State Legislature in 2023, the term “allowable gaming expenses” was added to Section 60-2E-27 NMSA 1978 (being Laws 1997, Chapter 190, Section 49, as amended). By adding the term “allowable gaming expenses”, the mathematical formula used to calculate the distributions for charitable & education (C&E) contributions and discretionary funds transferred to the licensed organizations for their expenses was radically altered. As expenses rise, the amount of funds committed to charitable and educational contributions decreases.

With the new inclusion of the term “allowable gaming expenses” in the Gaming Control Act, some form of definition of “allowable gaming expenses” needed to remain in 15.1.10.7(G) NMAC. Rather than removing the definition altogether as previously intended, the definition was amended through the formal Rule change process to include a definition that would maintain the current form of calculations. The Rule change was approved by the New Mexico Gaming Control Board (“NMGCB”) and went into effect on May 21, 2024.

Rule 15.1.10.7(G) NMAC was finally amended in 2024 to reflect practices in effect since a previous change to Rule 15.1.8.18(B)(6) NMAC which states that “after making the required tax, charity and discretionary fund transfers, the remaining funds in the gaming operating account are the property of the licensee. The balance in the gaming bank account shall not exceed twenty thousand (\$20,000) dollars. All funds in excess of twenty thousand (\$20,000) shall be transferred to the license’s general operations bank account. The remaining funds in the gaming operating bank account balance shall be maintained as a cash reserve to replenish gaming funds, if needed.” This particular rule has been in effect since October 15, 2015 and was approved with the intent that the organization’s leadership would determine expense payments. The revised rule removed the responsibility of paying gaming bills through the game room and re-assigned them to the gaming operator licensee’s parent organizations. This change was implemented at the

request of many of the licensees' highest-ranking officers to ensure that the gaming expenses were paid in accordance with the parent organization's own by-laws which often are very specific as to which elected officials have bill paying authority.

The addition of the definition of "balance of net take" would change the order of the calculations used to distribute revenue for charitable and educational contributions ("C&E") and discretionary revenues for the gaming operator licensees. In the gaming industry, net take is usually defined as coin-in less coin-out. No allowance is given for expenses incurred by a licensee.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

The agency would incur the costs of going through the formal rule change process to amend several rules to fit these definitions. Such cost can amount to around \$2.0 to \$3.0 as indicated in the table above.

SIGNIFICANT ISSUES

Enactment of the proposed bill would change the way gaming revenues are distributed and remove the ability of the non-profit organization to determine how to distribute their funds, leaving distribution of the items listed in the definition to the discretion of the gaming managers of each organization. The gaming revenues are then held by the gaming managers until the expenses are paid which delays any remaining funds being transferred to the organization. Further, the people who serve as gaming managers are not necessarily members of the organization and therefore do not have the same interest in the organization's well-being.

Many members of nonprofit organizations have been led to believe that the removal of a definition of "allowable gaming expenses" would mean they were unable to use gaming revenues to pay the expenses listed in the definition. Such an understanding is incorrect. The lack of the definition simply means, the leadership of the organization itself takes responsibility for paying the expenses.

The definition of "allowable gaming expenses" as proposed also contains conflicting items. Subsection (C)(7) lists "gaming device repair and maintenance" as an allowable gaming expense, but those particular costs are included in machine lease agreements as listed in Subsection (C)(6) which states "installment payments to an independent operator or lease payments".

PERFORMANCE IMPLICATIONS

May result in a reduction of contributions to charitable and educational contributions.

ADMINISTRATIVE IMPLICATIONS

The Agency will have to change its auditing procedures and train the non-profit organizations on

the new calculations. The new calculations are not likely to be perfectly implemented upon the bill taking effect so there will be a period of confusion and adjustment among the non-profit organizations.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

It is not expected that the proposed changes in HB 241 will have an impact on the gaming taxes paid to the state, or to the distributor lease payments which are dictated by the gaming machine leases between the licensed gaming machine distributors and the licensed gaming operator licensees. These items are covered by the statutes and rules listed below.

Gaming Tax:

61-2E-47 (B) NMSA – The gaming tax is an amount equal to ten percent of the gross receipts of manufacturer licenses from sale, lease, or other transfer of gaming devices in or into the state, except receipts of a manufacturer from the sale, lease, or transfer to a licensed distributor for subsequent sale or lease may be excluded from gross receipts; ten percent of the gross receipts of distributor licenses from the sale, lease or other transfer of gaming devices in or into the state; ten percent of the net take of a gaming operator licensee that is a nonprofit organization; and twenty-six percent of the net take of every other gaming operator licensee. For the purposes of this section, “gross receipts” means the total of money or the value of other consideration received from selling, leasing or otherwise transferring gaming devices.

15.1.8.10(B) NMAC – All gaming operator licensees shall remit to the state the gaming tax as provided for by the act. Tax payments shall be calculated based on net take from the gaming operator licensee’s gaming machines, as verified by the machines’ soft meters.

Distributor lease payment:

60-2E-13 (I) NMSA – A distributor may receive a percentage of the amount wagered, or the net take or other measure related to the operation of a gaming machine as a payment pursuant to a lease or other arrangement for furnishing a gaming machine, but the board shall adopt a regulation setting the maximum allowable percentage.

*15.1.10.32(A)(1) NMAC – the maximum of **forty percent** of the net take after gaming taxes or no greater than the contract amount if less than forty percent for payment to license distributors pursuant to a lease or other arrangement for furnishing a gaming machine:*

OTHER SUBSTANTIVE ISSUES

It is important to note that gaming at veteran and fraternal organizations is called charitable gaming. Charity and education support is the reason gaming was permitted in these organizations. Gaming revenues provide these organizations with additional funds to support charitable and educational needs of their members, communities and local charities while providing funds to support the operation of their organization.

As changes are made to how the calculations are made to the distribution of gaming revenue, any reallocation of funds to another area has a direct effect of funds available to another area on a dollar-to-dollar basis. Current regulations permit the gaming machine lease payment up to the maximum of forty percent of the net take after gaming taxes, charity and educational contributions are twenty percent of the net take after gaming taxes which leaves forty percent of the net take after gaming taxes available to the gaming operator licensee.

Several examples are attached to illustrate the calculations that have been used to determine the charitable and educational contributions and gaming expenses/discretionary funds that are transferred to the gaming operator licensees to cover their expenses. (see Attachment).

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The calculations for the non-profit organizations will remain the same and the leadership body of the organizations will continue to have control over the distribution of gaming funds as the leadership bodies are ultimately responsible for the finances of those organizations.

AMENDMENTS

ATTACHMENT 1
NON-PROFIT GAMING REVENUE BREAKDOWN
PRIOR to HB 253 (2023 Legislative Session)
(In Practice Since June 15, 2001 through July 1, 2023)

	Jan-25	
Net Revenue	1,000.00	
Less: State Tax (10%)	100.00	
Net Revenue After Tax (NRAT)	900.00	
Less: Max 40% of NRAT for Distributor Lease Payments	40.00% 360.00	
Less: 65% NRAT less Dist Pmt for Allowable Gaming Exps. (A.G.E.)	25.00% 225.00	* See Total Below
Net Revenue After Allowable Gaming Expenses (NRAGE)	315.00	
Less: 60% of NRAGE for Charitable Contributions	189.00	21% of NRAT
Less: 40% of NRAGE for Discretionary Expenses	126.00	* See Total Below
* TOTAL of AGE and Discretionary Expenses (Funds Available to Licensees)	351.00	39% of NRAT

ATTACHMENT 2a
NON-PROFIT GAMING REVENUE BREAKDOWN
AFTER PASSAGE of HB 253 (2023 Legislative Session)
Revised Calculation Subtracts "Allowable Gaming Expenses"
Before Calculating Charitable & Educational Contributions
(In Practice July 1, 2023 through May 31, 2024)

	Jan-25	
Net Revenue	1,000.00	
Less: State Tax (10%)	100.00	
Net Revenue After Tax (NRAT)	900.00	
Less: Max 40% of NRAT	40%	
Distributor Lease Payments	360.00	
Less: Allowable Gaming Expenses (AGE) - Gaming license Fees *	-	* Intentionally left blank
Net Revenue After Allowable Gaming Expenses (NRAGE)	540.00	
Less: 20% of NRAGE for Charitable Contributions	108.00	12% of NRAT
Discretionary Expenses	432.00	
Total of AGE and Discretionary Expenses (Funds Available to Licensees)	432.00	48% of NRAT

* Allowable Gaming Expenses (AGEs) were Intentionally left Blank. When other AGEs are entered, the amounts for Charitable Contributions and Discretionary Expenses are decreased accordingly.

ATTACHMENT 2b
NON-PROFIT GAMING REVENUE BREAKDOWN
AFTER PASSAGE of HB 253 (2023 Legislative Session)
Revised Calculation Subtracts "Allowable Gaming Expenses"
Before Calculating Charitable & Educational Contributions
(In Practice July 1, 2023 through May 31, 2024)

	Jan-25	
Net Revenue	1,000.00	
Less: State Tax (10%)	100.00	
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Net Revenue After Tax (NRAT)	900.00	
Less: Max 40% of NRAT	40%	
Distributor Lease Payments	360.00	
Less: Allowable Gaming Expenses (AGE) - Gaming license Fees *	200.00	* \$200 Entered as an Example
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Net Revenue After Allowable Gaming Expenses (NRAGE)	340.00	
Less: 20% of NRAGE for Charitable Contributions	68.00	7.56% of NRAT
Discretionary Expenses	272.00	
Total of AGE and Discretionary Expenses (Funds Available to Licensees)	472.00	52% of NRAT

* \$200 was entered as an example to demonstrate the impact additional Allowable Gaming Expenses (AGEs) have on the Charitable Contributions and Discretionary Funds.

ATTACHMENT 3
NON-PROFIT GAMING REVENUE BREAKDOWN
GCB PROPOSED CHANGE to HB 253
Without the Addition of "Allowable Gaming Expenses" (AGE)
and With NMGCB Rule Change Revising Definition of AGE
(In Practice June 1, 2024 through Present)

	Jan-25	
Net Revenue	1,000.00	
Less: State Tax (10%)	100.00	
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Net Revenue After Tax (NRAT)	900.00	
Less: Max 40% of NRAT	40%	
Distributor Lease Payments	360.00	
Less: 20% of NRAT	20%	
Charitable Contributions	180.00	Less: \$9.00 per \$1,000 Net Revenue
Discretionary Expenses	360.00	Plus: \$9.00 per \$1,000 Net Revenue
Discretionary Expenses (Funds Available to Licensee)	360.00	40.00% of NRAT