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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/13/13  
 SPONSOR SEC \_\_\_\_\_ LAST UPDATED 02/15/13 HB \_\_\_\_\_  
 SHORT TITLE Lottery Tuition Fund Distributions SB 392/SECS  
 ANALYST van Moorsel \_\_\_\_\_

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY13	FY14	FY15		
	(\$9,875.0)	(\$10,000.0)	Recurring	Tobacco Settlement Permanent Fund
	(\$1,058.0)	(\$1,058.0)	Recurring	General Fund
		(\$3,202.0)	Recurring	General Fund (Operating Reserve)
	\$10,933.0	\$11,058.0	Recurring	Lottery Tuition Fund

(Parenthesis ( ) Indicate Revenue Decreases)

Relates to:

- HB 2 - General Appropriation Act of 2013
- HB 27 - Expanding Lottery Scholarship Eligibility
- HB 28 - Lottery Scholarships at Tribal Colleges
- HB 309 - Lottery Scholarship Program Solvency
- HB 341 - No Tobacco Settlement Fund as Reserve Fund.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

State Investment Council (SIC)

New Mexico Lottery Authority (NMLA)

### SUMMARY

#### Synopsis of Bill

Senate Education Committee Substitute for Senate Bill 392 amends current law and provides for an appropriation to increase the distributions to the lottery tuition fund. The bill provides that,

beginning in FY14, 25 percent of the distribution to the tobacco settlement permanent fund be distributed from that fund to the lottery tuition fund.

SEC/SB 392 also creates a new section of the Tax Administration Act that would distribute to the lottery tuition fund the amounts automatically withheld pursuant to the Withholding Tax Act on lottery winnings.

Finally, CS/SB 392 would require the governor, upon certification by the state treasurer that the balance of the lottery tuition fund is not sufficient to meet the scholarship obligations for fiscal year 2014, 2015, or 2016, to transfer from the general fund operating reserve to the lottery tuition fund the amount necessary to meet that fiscal year's scholarship obligations. This transfer may not exceed one percent of the balance of the general fund operating reserve as of July 1, 2013 (projected to be \$320.2 million in the LFC's 2013 budget recommendation).

The effective date of this legislation is July 1, 2013.

## **FISCAL IMPLICATIONS**

CS/SB 392 would create three additional revenue sources for the lottery tuition fund, which currently receives revenue generated by the New Mexico Lottery Authority. The bill transfers funds from the Tobacco Settlement Permanent Fund, transfers withholding tax on lottery winnings, and establishes criteria for the transfer of funds from the general fund operating reserve.

Historically the annual tobacco settlement payment has averaged \$40 million, and is estimated to be \$39.5 million in FY14. Thus, the transfer to the lottery tuition fund of 25 percent of the distribution to the tobacco settlement permanent fund would generate approximately \$10 million per year.

Current law provides that, beginning in FY07, 50 percent of the annual transfer to tobacco settlement permanent fund be transferred to the tobacco settlement program fund. In FY09-FY13, the remaining 50 percent is also transferred to the tobacco settlement program fund. The transfer provided for in CS/SB 392 would take effect in the fiscal year after the expiration of the additional 50 percent transfer to the program fund.

The bill would also distribute to the lottery tuition fund the amounts automatically withheld pursuant to the Withholding Tax Act on lottery winnings. The NMLA tracks the amount of money withheld pursuant to the Withholding Tax Act on lottery winnings. Between FY10 and FY12, the amount withheld averaged \$833,000, and the largest amount withheld was \$1.1 million, in FY12.

For FY15 (academic year 2014-15) and without any action by the executive or legislative branches, either fall and spring awards would be capped at lottery revenues or an estimated \$40 million annually (compared with approximately \$60 million in scholarship need projected for FY13).

CS/SB 392 would increase revenue to the lottery tuition fund by approximately \$11 million per year. Although the additional revenue would decrease the current revenue shortfall, it would not be sufficient to keep pace with increasing expenditures. That persistent revenue shortfall would

exhaust the lottery tuition fund balance and require an annual transfer of funds from the general fund operating reserve to the lottery tuition fund beginning in FY15. The shortfall would exceed one percent of the projected operating reserve balance at the end of FY13, and would therefore be capped at that amount, approximately \$3.2 million.

Even given the additional transfer from the operating reserve, revenue to the lottery tuition fund would not be sufficient to cover growing expenditures. Barring program changes that would reduce expenditures, the HED would be required to reduce award amounts beginning in FY15.

This bill may be counter to the LFC tax policy principle of adequacy, efficiency and equity because it would reduce revenue to the general fund. Due to the increasing cost of tax expenditures, revenues may be insufficient to cover growing recurring appropriations.

### **SIGNIFICANT ISSUES**

The legislative lottery scholarship program is the state's largest aid program, rewarding high school academic performance and sustained progress in college. Program costs have increased due to slightly rising student eligibility and demand and steadily increasing tuition levels. Passed during the 2012 legislative session, HJM 14 called for a legislative and executive task force to address the projected loss of lottery fund balance and relatively flat lottery revenues. The task force did not meet, though the department and legislative staff have examined possible solutions to address solvency and align the scholarship program with other state college completion goals. NMAC 5.7.20.10 states that "the amount of the award may vary dependent upon the amount of funds received from the lottery tuition fund and the number of eligible recipients. Scholarships shall only apply to tuition costs." The rule requires that HED, in May of each year, notify eligible postsecondary institutions of the percentage of tuition each scholarship will provide.

For FY14 (academic year 2013-14), the LFC projects fall 2013 semester awards can be met fully with incoming lottery revenues and remaining fund balance, but it is unlikely spring 2014 awards can be met fully. The projected annual shortfall is an estimated \$5 million. By law, the department will announce the award amount for FY14 by May 2013, and the announcement might address the shortfall. For FY14, the Legislature could condition a supplemental appropriation of nonrecurring funding for this amount on a program review and the development of a solvency plan by the start of the 2014 legislative session.

During the last two legislative sessions, the Legislative Education Study Committee (LESC) and the LFC have held many hearings on the legislative lottery scholarship program, options for improving program solvency, and the impacts of possible options on the recipient pool. The scholarship program is merit-based and does not consider an eligible student's financial need, though some scholarship recipients receive additional federal, state, institutional, or other merit-based and need-based aid to meet college costs. The Legislature, the HED, institutions, and others have considered program changes such as raising eligibility requirements, including higher grade point averages, heavier semester courseloads, and means-testing; reducing the maximum number of scholarship semesters; and reducing the scholarship amount. Most of these options reduce the pool of eligible students, particularly disadvantaged students.

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Relates to:

- HB 27 - Expanding Lottery Scholarship Eligibility;
- HB 28 - Lottery Scholarships at Tribal Colleges;
- HB 309 - Lottery Scholarship Program Solvency;
- HB 341 – No Tobacco Settlement Fund as Reserve Fund;
- The General Appropriation Act appropriates revenues and fund balance from the lottery tuition fund for lottery scholarships. For FY14, the LFC recommendation included \$60.2 million for lottery scholarships; this amount is based on FY12 actual scholarship expenses and an average 2012-13 tuition increase of 4 percent.

PvM/svb:blm