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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/26/15

SPONSOR McSorley LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE NM Lottery Employee Bonus & Incentive Amounts SB 591

ANALYST van Moorsel

### REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17	FY18	FY19		
Minimal					Recurring	Lottery Tuition Fund

Parenthesis ( ) indicate revenue decreases

Relates to SB 286 – Lottery Prizes to Tuition Fund; 355 – Purchase of Lottery Tickets with Card.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
 NM Lottery Authority (NMLA)

### SUMMARY

#### Synopsis of Bill

Senate Bill 591 amends the New Mexico Lottery Act to require that that any bonus or incentive compensation awarded to an employee of the New Mexico Lottery Authority (NMLA) be calculated based on the amount transmitted to the State Treasurer at the end of each month for deposit in the lottery tuition fund and not calculated based on the lottery's gross revenues.

There is no effective date of this bill. It is assumed that the new effective date is 90 days after this session ends.

### FISCAL IMPLICATIONS

The NM Lottery Authority reports this bill would have not fiscal implications.

Although the bill does require that bonuses be calculated based on the amount transmitted to the State Treasurer at the end of each month for deposit in the lottery tuition fund and shall not be

calculated based on the lottery's gross revenues, the bill does not specify precisely how the bonuses should be calculated.

To the extent that it appears the bill aims to provide an incentive to maximize the transfer to the lottery tuition fund, this bill might have a minimal effect on such transfers. However, this is impossible to quantify without further information in the analysis from NMLA.

NMLA's budget in the LFC Report for Fiscal Year 2016 does show total salaries, wages, and benefits, but it does not specify the amount of bonuses currently paid to employees.

## **SIGNIFICANT ISSUES**

The AOC identifies several issues with the bill. According to the AOC:

- There is a question whether awarding a bonus to a lottery authority employee would constitute a donation to an individual by a governmental entity, in violation of the anti-donation clause, Article IX, Sec. 14, of the Constitution of NM. The NM Supreme Court has held that only donations made for public purposes are permissible, such as expenditures for public purposes on public property. *Hotel of Distinction W., Inc. v. City of Albuquerque*, 107 N.M. 257, 259, 755 P.2d 595, 597 (1988). The clause provides that

Neither the state nor any county, school district or municipality, except as otherwise provided in this constitution, shall directly or indirectly lend or pledge its credit or make any donation to or in aid of any person, association or public or private corporation or in aid of any private enterprise for the construction of any railroad; provided: [noting limited exceptions]...

In the wake of bonuses being paid to employees of the both the Central Consolidated School District and the Rio Rancho district, the Public Education Department issued a memo to all school districts warning that bonuses to school employees appeared to be unconstitutional and in violation of the anti-donation clause. The Attorney General's Office was investigating the Central Consolidated School District matter.

- Section 6-24-24 NMSA 1978, within the NM Lottery Act, governs disposition of revenue, requiring that by the last business day of each month, as of January 1, 2009, the authority shall transmit at least 30% of the gross revenue of the previous month thereafter to the state treasurer, who shall deposit it in the lottery tuition fund. (Subsection B) Subsection C provides

“C. Operating expenses of the lottery include all costs incurred in the operation and administration of the lottery and all costs resulting from any contracts entered into for the purchase or lease of goods or services required by the lottery, including the costs of supplies, materials, tickets, independent audit services, independent studies, data transmission, advertising, promotion, incentives, public relations, communications, commissions paid to lottery retailers, printing, distribution of tickets, purchases of annuities or investments to be used to pay future installments of winning lottery tickets, debt service and payment of any revenue bonds issued, contingency reserves, transfers to the reserve fund and any other necessary costs incurred in carrying out the provisions of the New Mexico Lottery Act.”

Subsection C includes “incentives” within the meaning of operating expenses, but not bonuses.

### ADMINISTRATIVE IMPLICATIONS

The AOC notes it will incur a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and challenges to the awarding of a bonus as an unconstitutional donation in violation of the Article IX, Sec. 14 of the Constitution of NM, the anti-donation clause. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

Does the bill meet the Legislative Finance Committee tax policy principles?

1. **Adequacy:** Revenue should be adequate to fund needed government services.
2. **Efficiency:** Tax base should be as broad as possible and avoid excess reliance on one tax.
3. **Equity:** Different taxpayers should be treated fairly.
4. **Simplicity:** Collection should be simple and easily understood.
5. **Accountability:** Preferences should be easy to monitor and evaluate

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