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FISCAL IMPACT REPORT

SPONSOR Altamirano DATE TYPED 2/14/04 HB _____

SHORT TITLE Expand Use of Liens on Lottery Winnings SB 558/aSfI#1

ANALYST Dunbar

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY04	FY05	FY04	FY05		
	See Narrative				

SOURCES OF INFORMATION

LFC Files

Responses Received From

Human Services Department (HSD)

Attorney General's Office (AG)

SUMMARY

Synopsis of SFI Amendment # 1

Senate Floor Amendment # 1 amends the bill as follows:

- ❑ Includes a specific reference to the Title IV-D child support program relevant to the list furnished to the lottery authority for the use of liens on lottery winnings. This language will keep the state in compliance with the federal IV-D State Plan. Reference “Technical Issues” and “Amendment A” below.
- ❑ Increases the length of time from 30 days to 90 days that the lottery authority may hold the prize, pending administrative seizure proceeding by the HSD. Reference “Technical Issues” and “Amendment D” below.
- ❑ Removes language referencing “garnishment” or “wage withholding” and substitutes “administrative seizure” in its place. The change in language allows the department to intercept lottery winnings without the necessity of returning to district court for a Writ of Garnishment. Reference “Technical Issues” and “Amendment D” below.
- ❑ Establishes a child support enforcement case as the first priority over all other liens. Reference “Administrative Implications” below.

Synopsis of Original Bill

SB 558 modify NMSA 1978, § 6-24-22, which sets forth the procedure by which the Human Services Department certifies the names and Social Security numbers of child support debtors to the Lottery Authority. This section requires the authority to withhold child support debts from lottery winnings in excess of \$600. The bill would remove language that currently makes § 6-24-22 applicable only to child support debts, meaning that the procedure could be used to collect other debts owed to HSD by lottery winners, such as overpayments of assistance and restitution of fraudulent claims.

Significant Issues

The intent of the bill is to expand Human Services Department's (HSD) power to intercept lottery winnings to include collections of debt owed to HSD (Medicaid, Food Stamps, General Assistance, Low Income Energy Assistance and Temporary Assistance to Needy Families-TANF) as well as to collect monies owed for child support.

FISCAL IMPLICATIONS

The full cost of implementing the proposals in SB558 is anticipated to be very minimal. In future years, it may be offset by higher fund recovery rates from the lottery winnings.

ADMINISTRATIVE IMPLICATIONS

If SB 558 becomes law, and a lottery prize winner is the subject of more than one claim established by the Human Services Department, some provision for specifying the distribution of funds collected to the various claims will have to be determined.

At a minimum, the HSD will have to develop some formal internal procedures for how the liens and/or intercepts now being done by CSED shall be applied. For example, there may be instances when the CSED and the Office of Inspector General (OIG) need to go after the same client's lottery winnings for collection/recoupment reasons for child support, TANF and Medicaid. These procedures would determine which entity (CSED, ISD, MAD or the Custodial Parent) has the priority of repayment and to what extent (25%, 50%, 100%, or equal percentages to each entity), in accordance with federal regulations.

The cost of developing these procedures can be absorbed through existing budgets and staffing patterns.

No impact to the court system will be felt if the suggested amendments are incorporated into the bill and this allows HSD to take action against lottery prize winners administratively and not judicially. If not, impact to the court system, by the way of heavier caseloads, will be felt by the proposed changes in SB558 since the filings of liens will be done in District Court. The Administrative Office of the Courts would also have to assist in the training of judges and court clerks who would handle the new lien cases filed by HSD.

TECHNICAL ISSUES

HSD is concerned that dropping this specific reference to the Title IV-D program would jeopard-

ize New Mexico's compliance with the federal Title IV-D State Plan. This specific language exists in all the CSED legislation on advice from the federal Office of Child Support Enforcement (OCSE). To alleviate this concern an amendment to Section A is offered below under Amendments.

If this existing lottery law at 6-24-22 NMSA 1978 is going to be changed, HSD suggests a change at section "D". Currently, another statute (27-1-11.G.(1)(b)) gives the state Title IV-D agency (CSED) the authority to secure assets to satisfy arrearage by intercepting or seizing payments from lotteries "without the necessity of obtaining an order from any other judicial or administrative tribunal..." Yet the older statute under consideration for amendment in SB558 (6-24-22.D.) makes reference to "garnishment" proceedings. If the language at section "D" were modified to clearly comport with 27-1-11.G.(1)(b) NMSA 1978, then it would be clear that CSED can act in an administrative action (with the due process safeguards provided for in 27-1-11.K NMSA 1978) to intercept lottery winnings without the necessity of returning to district court for a Writ of Garnishment. From a practical point of view, this change would streamline the process, as existing administrative due process procedures afforded by HSD for financial institution intercept to collect child support are more expeditious than seeking a remedy through the district courts. Reference is made to Section D Amendments below.

AMENDMENTS

HSD suggest the following amendment to address the "Technical Issues" noted above. The recommendations would be to change the language in "A" and "D" to read:

A. The human services department shall periodically certify to the authority the names and social security numbers of persons owing a debt to or collected by the human services department. This shall include individuals that owe child support being collected by the state's child support enforcement agency pursuant to Title IV-D of the Social Security Act]

D. If the lottery prize is to be paid directly by the authority, the amount of the debt owed to or collected by the human services department shall be held by the lottery indefinitely from the lottery's confirmation of the amount of the debt to allow the department to institute any necessary garnishment or wage withholding administrative seizure proceedings in accordance with 27-1-11.

Or:

D. If the lottery prize is to be paid directly by the authority, the amount of the debt owed to or collected by the human services department shall be held by the lottery for a period of ninety days from the lottery's confirmation of the amount of the debt to allow the department to institute any necessary garnishment or wage withholding administrative seizure proceedings in accordance with 27-1-11. If an garnishment or withholding administrative seizure proceeding is not initiated within the ninety-day period, the authority shall release the lottery prize payment to the winner.

The word "support" should probably be deleted from the last sentence of para. C (line 14 on p. 2 of the bill).

BD/yr