

**LEGISLATIVE EDUCATION STUDY COMMITTEE  
BILL ANALYSIS**

**Bill Number:** SB 591

**52nd Legislature, 1st Session, 2015**

**Tracking Number:** .200234.1

**Short Title:** NM Lottery Employee Bonus & Incentive Amounts

**Sponsor(s):** Senator Cisco McSorley

**Analyst:** Travis Dulany

**Date:** March 19, 2015

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**Bill Summary:**

SB 591 amends the powers of the New Mexico Lottery Authority (NMLA) in the *New Mexico Lottery Act* to require that any bonus or incentive compensation awarded to an NMLA employee must:

- 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 be calculated based on the New Mexico Lottery's gross revenues.

**Fiscal Impact:**

SB 591 does not contain an appropriation.

**Fiscal Issues:**

The Fiscal Impact Report from the Legislative Finance Committee (LFC) indicates that, to the extent that it appears this bill aims to provide an incentive to maximize the transfers to the Lottery Tuition Fund, SB 591 "might have a minimal impact on such transfers." LFC further states, "However, this is impossible to quantify without further information in the analysis from NMLA."

**Technical Issues:**

Laws 2014, Chapter 80 required that, from July 1, 2015 to July 1, 2017, 39 percent of the net receipts attributable to the Liquor Excise Tax shall be made to the Lottery Tuition Fund. Because the Lottery Tuition Fund has multiple sources of revenue, the sponsor may wish to consider amending the bill to specify that bonus or incentive pay for NMLA employees must be based on the amount *from lottery ticket sales* transmitted to the State Treasurer at the end of each month for deposit in the Lottery Tuition Fund.

**Substantive Issues:**

The bill analysis from the Administrative Office of the Courts (AOC) questions whether awarding a bonus to an NMLA employee would constitute a donation to an individual by a governmental entity, in violation of the anti-donation clause under Article IX, Section 14 of the Constitution of the State of New Mexico. The AOC further states that:

- “[t]he NM Supreme Court has held that only donations made for public purposes are permissible, such as expenditures for public purposes on public property”;
- “[i]n the wake of bonuses being paid to employees of the [sic] 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”;
- and
- the Attorney General’s Office was investigating the Central Consolidated Schools matter.

AOC further suggests that the language in statute governing the revenue distribution of the New Mexico Lottery provides for incentives within the meaning of “operating expenses”; however, the language does not provide for bonuses.

### **Background:**

Provisions in the *New Mexico Lottery Act* specify that lottery revenue is to be distributed in the following manner:

- As nearly as practical, an amount equal to at least 50 percent of the gross annual revenue from the sale of lottery tickets shall be returned to the public in the form of lottery prizes.
- No later than the last business day of each month, NMLA shall transmit, as of January 1, 2009, at least 30 percent of the gross revenue of the previous month thereafter to the State Treasurer, who shall deposit it in the Lottery Tuition Fund.
- 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.

Deposits in the Lottery Tuition Fund are used for tuition scholarships pursuant to the *Legislative Lottery Tuition Scholarship Act*. Prior to academic year 2014-2015, this scholarship program covered 100 percent of tuition costs for eligible students; however stagnant revenues, combined with increased tuition costs and higher scholarship program participation rates, resulted in expenditures that exceeded revenues. Specifically, according to the *Legislative Lottery Scholarship Report* by the Higher Education Department (HED) from December 2014, FY 14 lottery revenues were just under \$41 million, meanwhile total expenditures for scholarships were \$66.8 million.<sup>1</sup>

For the spring 2015 semester, HED has set tuition scholarship amounts at 95 percent of the average cost of tuition, depending upon which type of institution in which the student is enrolled (i.e. research institution, comprehensive institution, or community college).

Created by legislation enacted in 1996, the Legislative Lottery Tuition Scholarship is a renewable award granted to qualified students beginning in their second semester at a public postsecondary institution in New Mexico. The scholarship covers the cost of tuition only. Students are responsible for additional educational expenses such as student fees, course materials, and housing.

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<sup>1</sup> For FY 14, additional sources of revenue were available, including supplemental appropriations and a distribution from the Tobacco Settlement Permanent Fund. Additionally, the Lottery Tuition Fund’s FY 14 beginning balance was \$18.8 million, according to HED.

Under the newly enacted *Legislative Lottery Tuition Scholarship Act*, a student must:

- maintain residency in New Mexico;
- have graduated from a public or accredited private New Mexico high school or have obtained a New Mexico High School Equivalency Credential while maintaining New Mexico residency;
- enroll full-time (in at least 15 credit hours, or 12 credit hours for legacy students<sup>2</sup> and community college students) at an eligible New Mexico postsecondary educational institution immediately upon graduation; and
- attain and maintain a grade-point average of at least 2.5.

State law also provides for specific accommodations with regard to:

- students with disabilities; and
- individuals who either immediately enlist in, or have recently departed from, the US Armed Forces.

**Committee Referrals:**

SJC/SFC

**Related Bills:**

HB 375 *Branch Colleges in Tuition Scholarship*  
HB 429 *Lottery Scholarships for Home School*  
HB 460 *Study Lottery Tuition Recipient Monitoring*  
HM 93 *Year-round Legislative Lottery Scholarship*  
HM 112 *Tuition Scholarship Amounts & Notices*  
SB 286 *Forfeited Lottery Prizes to Tuition Fund*  
CS/SB 355 *Purchase of Lottery Tickets with Card*  
SB 521 *Lottery Scholarships for Home School*  
SB 657 *Lottery Scholarship as Full Scholarship*  
SM 108 *Tuition Scholarship Amounts & Notices*

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<sup>2</sup> As defined in the *Legislative Lottery Tuition Scholarship Act*, a legacy student is one who has received the Legislative Lottery Tuition Scholarship for three or more semesters prior to the end of FY 14.