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FISCAL IMPACT REPORT

SPONSOR Lara/Anderson/Pettigrew/Neville ORIGINAL DATE 02/07/21 HB 101
 LAST UPDATED _____ SB _____
 SHORT TITLE NM Lottery Ed Assistance Act SB _____
 ANALYST Valenzuela

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY21	FY22		
	See Fiscal Implications	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue				Recurring or Nonrecurring	Fund Affected
FY21	FY22	FY23	FY24		
	Up to (\$68,600.0)	Up to (\$69,100.0)	Up to (\$70,200.0)	Recurring	General Fund (Lost Tribal Revenue sharing)
	Up to \$30,000.0	Up to \$30,000.0	Up to \$30,000.0	Recurring	General Fund (new gaming revenue)
	Up to \$10,000.0	Up to \$10,000.0	Up to \$10,000.0	Recurring	Lottery Tuition Fund

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$6,000.0	\$6,000.0	\$18,000.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Attorney General
 Gaming Control Board
 New Mexico Lottery Authority

Multiple Colleges and Universities

SUMMARY

Synopsis of Bill

House Bill 101 creates a new law, the Lottery Education Assistance Act, for the purpose of allowing sports betting and table games at the five licensed racinos across the state. The bill would distribute tax revenues – assessed against the adjusted gross receipts of 10 percent from sports betting and 15 percent from table game revenues – generated from the gaming activity to a newly created fund, called the NM educational assistance fund. From the fund, \$10 million would be distributed to the New Mexico lottery tuition scholarship fund, with excesses sent to the state’s general fund.

The effective date of this bill is July 1, 2021.

FISCAL IMPLICATIONS

HB101 creates a new fund to accrue sports betting and table gaming tax revenues, and from which a continuing annual appropriations of \$10 million would be transferred to another fund, the lottery tuition fund. Any revenue over \$10 million would transfer to the state general fund.

If HB101 is enacted, the state’s revenue agreement with tribal governments could be terminated (see analysis in “Significant Issues”). Annually, the state receives approximately \$70 million from these revenue sharing agreements. Proponents of the bill estimate enactment would generate \$40 million annually, of which \$10 million would be directed to the lottery tuition fund, resulting in a net loss to the general fund of \$30 million annually. The state, however, could face greater revenue losses if estimates do not materialize or because of timing differences.

According to the New Mexico Lottery Authority (NMLA), developing the program could take up to a year. If HB101 is enacted, there is a high probability the tribal revenue sharing agreement would terminate shortly thereafter. As a result, the state would lose at least the next year’s revenue when no revenue is generated under HB101.

According to the Gaming Control Board, in 2019 (pre-pandemic), the tribal-reported net win from slot machines was \$821 million, producing annual revenue to the state totaling more than \$75 million. To achieve \$40 million in tax revenue, adjusted gross receipts at the racinos from table games would have to produce \$70 million annually and from sports betting, \$63 million. Applying similar methodology, these net revenues indicate a gaming market producing gross revenues of \$500 million or more, or almost doubling the market in New Mexico.

SIGNIFICANT ISSUES

The central issue of this bill is whether enactment of HB101 would violate the state’s existing revenue sharing agreement with tribal governments. An interpretation of existing statutes is offered below.

Proponents argue the bill would not violate the compacts because operation of a state lottery is exempt under the terms of the compacts. Furthermore, the compacts do not specifically define the

allowable gaming operations that may be undertaken by a state lottery. New Mexico's state lottery operations, however, are defined in state law, under Section 6-24-1 to 6-24-26 NMSA 1978:

F. "lottery game" means any variation of the following types of games, but does not include any video lottery game:

(1) an instant-win game in which disposable tickets contain certain preprinted winners that are determined by rubbing or scraping an area or areas on the tickets to match numbers, letters, symbols or configurations, or any combination thereof, as provided by the rules of the game; provided, an instant-win game may also provide for preliminary and grand prize drawings conducted pursuant to the rules of the game; and

(2) an on-line lottery game in which a lottery game is hooked up to a central computer via a telecommunications system through which a player selects a specified group of numbers or symbols out of a predetermined range of numbers or symbols and purchases a ticket bearing the player-selected numbers or symbols for eligibility in a drawing regularly scheduled in accordance with game rules

However, HB101 would expand class III gaming within the state, which is expressly prohibited under the compacts. The Attorney General's office (N MAG) and the Gaming Control Board are clear on this point. According N MAG, the compact will terminate if the state restricts tribal gaming revenues by licensing new or expanded existing nontribal gaming facilities, including issuing new permits or licenses or allowing gaming machines (class III). The "operation of a state lottery" is listed as an exemption in the compacts, but, according to the Gaming Control Board, the compacts communicate class III gaming exclusivity as a whole in Section 11 and expanding Class III gaming overseen or conducted by the lottery would not fall under an exemption. According to the Gaming Control Board, the remedy for tribal governments is to no longer share gaming revenue with the state.

Adjusted Gross Receipts. Under the provisions of the bill, gaming revenues would be be taxed 15 percent of adjusted gross receipts for table games and 10 percent of adjusted gross receipts for sports betting. Supporters of the bill estimate tax revenue would be as much as \$40 million annually. According to HB101, the Lottery Authority would be allowed to pay for its expenses associated with implementing and overseeing class III gaming at the five racinos across the state.

ADMINISTRATIVE IMPLICATIONS

NMLA would face developing a startup operation to implement HB101 because very little of its current activities will translate to table gaming or sports betting at racinos. The Lottery Authority estimates up to a year to develop startup plans and promulgate rules. NMLA currently does not have in-house counsel and instead uses outside legal counsel as needed. The extensive rules needed to address the ct's provisions would require significant work with the outside counsel and could warrant a full-time in-house attorney for NMLA.

NMLA estimates approximately 20 new employees would be required: one department manager, five in licensing, five in security, two in finance, two in information technology, one in legal, one in compliance/audit, one in human resources, and two in administration. Based on the Lottery Authority current cost structure, 3 percent of gross revenues to support its operations, HB101 could

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increase annual operating costs by \$6 million annually. It is important to note the Lottery Authority may incur substantially higher costs in the first few years as it develops core skills required to meet the requirements of HB101, principally, legal, gaming and financial expertise.

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