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HOUSE BILL 209

43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998

INTRODUCED BY

GERALD E. WEEKS

FOR THE LOTTERY OVERSIGHT COMMITTEE

AN ACT

CREATING A GAMING OVERSIGHT COMMITTEE AND PROVIDING FOR ITS
AUTHORITY AND DUTIES; AMENDING SECTIONS 6-24-10, 6-24-27,
6-24-28 AND 6-24-33 NMSA 1978 (BEING LAWS 1995, CHAPTER 155,
SECTIONS 10, 27, 28 AND 33); REPEALING SECTION 6-24-9 NMSA
1978 (BEING LAWS 1995, CHAPTER 155, SECTION 9); DECLARING AN
EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] LEGISLATIVE GAMING OVERSIGHT
COMMITTEE CREATED-- MEMBERSHIP-- ORGANIZATION-- ADVISORY
MEMBERS-- PAYMENT OF COMMITTEE MEMBERS-- DISQUALIFYING
INTERESTS-- PROHIBITED ACTS. --

A. The "gaming oversight committee" is created as
a joint interim legislative committee.

B. The committee consists of eight members, four

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1 from the house of representatives and four from the senate.
2 The house members shall be appointed by the speaker of the
3 house of representatives. The senate members shall be
4 appointed by the committees' committee of the senate or, if
5 the senate appointments are made in the interim, by the
6 president pro tempore of the senate after consultation with
7 and agreement of a majority of the members of the committees'
8 committee. Members shall be appointed so that there are two
9 members of the committee from each of the major political
10 parties from each house. The power of appointment shall be
11 exercised by the appointing authority at the beginning of each
12 interim so that committee members may be reappointed or
13 replaced. Members shall serve a term beginning with the date
14 of appointment and ending on the first day of the regular
15 session of the legislature following the interim for which the
16 member is appointed. No representative or senator shall serve
17 as a committee member for more than four consecutive interims.
18 Vacancies on the committee shall be filled by the appointing
19 authority to serve until the end of the interim in which the
20 succeeding member is appointed.

21 C. The chairman of the first committee appointed
22 pursuant to this section shall be designated by the speaker of
23 the house of representatives and the vice chairman of the
24 first committee appointed shall be designated by the president
25 pro tempore of the senate. The positions of chairman and vice

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1 chairman shall thereafter rotate at the beginning of each
2 interim so that a senate member is designated chairman for the
3 committee serving during the second interim and a house member
4 is designated a vice chairman.

5 D. The respective appointing authorities may
6 appoint members of the two bodies of the legislature as
7 advisory members of the committee. The conditions of
8 appointment of members shall also apply to the appointment of
9 advisory members. Advisory members shall not vote on actions
10 taken by the committee.

11 E. A quorum consists of five voting members of the
12 committee.

13 F. Members and advisory members shall be paid per
14 diem and mileage for attendance at a regularly called meeting
15 of the committee if a quorum of the membership is present or,
16 in the absence of a quorum, if a majority of the total
17 membership of the committee, including advisory members, is
18 present.

19 G. A legislator shall not be appointed to or serve
20 on the committee if he has a pecuniary interest in an entity
21 operating gaming activities within the state or supplying
22 services or personal property to an entity operating or
23 regulating gaming activities within the state. As used in
24 this subsection "pecuniary interest" means an ownership
25 interest that is of a quality or quantity to affect

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1 significantly, directly or indirectly, the decisions or
2 activities of an entity operating gaming activities within the
3 state or supplying services or personal property to an entity
4 operating or regulating gaming activities within the state.

5 Section 2. [NEW MATERIAL] GAMING OVERSIGHT COMMITTEE--
6 DUTIES AND AUTHORITY--STAFFING. --

7 A. The gaming oversight committee shall exercise
8 its responsibility for oversight by:

9 (1) continuously reviewing the operations of
10 all state agencies and instrumentalities involved in the
11 operation of or regulation of gaming activities within the
12 state;

13 (2) during an interim, making advisory
14 recommendations to the executive branch for appropriate
15 actions by it to improve the operations and regulation of
16 gaming activities within the state;

17 (3) at the close of an interim, making
18 recommendations to the legislature for legislation or other
19 actions in the next following regular legislative session to
20 improve the operations and regulation of gaming activities
21 within the state; and

22 (4) making and publishing an annual report of
23 its activities prior to the end of each interim, copies of
24 which shall be furnished to the governor, the speaker of the
25 house of representatives and the chairman of the committees'

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1 committee of the senate with further distribution of the
2 report as determined by the committee.

3 B. In exercising its responsibilities for
4 oversight, the gaming oversight committee:

5 (1) may investigate the operations and
6 regulation of gaming activities within the state;

7 (2) may require persons to appear and testify
8 before it and to produce information in any form for review by
9 the committee if the subject matter of the testimony or
10 information sought is relevant to the committee's
11 responsibilities specified in Subsection A of this section;

12 (3) may issue appropriate subpoenas to compel
13 persons to appear and testify and to produce information as
14 specified in Paragraph (2) of this subsection and, in the
15 event of noncompliance with an issued subpoena, may seek
16 enforcement of the subpoena in the district court of the first
17 judicial district; and

18 (4) may take action reasonably necessary to
19 fulfill its responsibilities delineated in this section even
20 though specific authority for a particular action is not
21 expressed in this section.

22 C. Staff services for the gaming oversight
23 committee shall be furnished by the legislative council
24 service and funds for its expenses shall be budgeted by the
25 legislative council service. Staff services that are not

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1 readily available from the legislative council service may be
2 provided to the committee if requested from and approved by
3 the legislative council.

4 Section 3. Section 6-24-10 NMSA 1978 (being Laws 1995,
5 Chapter 155, Section 10) is amended to read:

6 "6-24-10. CHIEF EXECUTIVE OFFICER--COMPENSATION--
7 APPOINTMENT--DUTIES.--

8 A. The board shall appoint and set the
9 compensation of a "chief executive officer", who shall serve
10 at the pleasure of the board.

11 B. The chief executive officer, who shall be an
12 employee of the authority, shall:

13 (1) manage and direct the operation of the
14 lottery and all administrative and technical activities of the
15 authority in accordance with the provisions of the New Mexico
16 Lottery Act and pursuant to rules, policies and procedures
17 adopted by the board pursuant to that act;

18 (2) employ and supervise such personnel as
19 deemed necessary;

20 (3) with the approval of the board and
21 pursuant to rules, policies and procedures adopted by the
22 board, enter into contracts for materials, equipment and
23 supplies to be used in the operation of the lottery, for the
24 design and installation of lottery games, for consultant
25 services and for promotion of the lottery;

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1 (4) contract with lottery retailers pursuant
2 to the New Mexico Lottery Act and board rules;

3 (5) promote or provide for promotion of the
4 lottery and any functions related to the authority;

5 (6) hire an executive vice president for
6 security and an internal auditor and take all necessary
7 measures to provide for the security and integrity of the
8 lottery;

9 (7) prepare an annual budget for the approval
10 of the board;

11 (8) provide quarterly to the board, the
12 governor, the [~~lottery~~] gaming oversight committee and the
13 legislative finance committee a full and complete report of
14 lottery revenues and expenses for the preceding quarter; and

15 (9) perform such other duties as are
16 necessary to implement and administer the lottery.

17 C. The chief executive officer may refuse to renew
18 [~~any~~] a lottery contract in accordance with the provisions of
19 the New Mexico Lottery Act or the rules, policies and
20 procedures of the board.

21 D. The chief executive officer or his designee may
22 conduct hearings and administer oaths to persons for the
23 purpose of assuring the security or integrity of lottery
24 operations or to determine the qualifications of or compliance
25 by lottery vendors and lottery retailers. "

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1 Section 4. Section 6-24-27 NMSA 1978 (being Laws 1995,
2 Chapter 155, Section 27) is amended to read:

3 "6-24-27. REVENUE AND BUDGET REPORTS--RECORDS--
4 INDEPENDENT AUDITS. --

5 A. The board shall:

6 (1) submit quarterly and annual reports to
7 the governor, legislative finance committee and lottery
8 oversight committee disclosing the total lottery revenue,
9 prizes, commissions, ticket costs, operating expenses and net
10 revenues of the authority during the reporting period and, in
11 the annual report, describe the organizational structure of
12 the authority and summarize the functions performed by each
13 organizational division within the authority;

14 (2) maintain weekly or more frequent records
15 of lottery transactions, including the distribution of lottery
16 tickets to retailers, revenue received, claims for prizes,
17 prizes paid, prizes forfeited and other financial transactions
18 of the authority; and

19 (3) use the state government fiscal year.

20 B. The board shall provide, for informational
21 purposes, to the department of finance and administration and
22 the legislative finance committee, by December 1 of each year,
23 a copy of the annual proposed operating budget for the
24 authority for the succeeding fiscal year. This budget
25 proposal shall also be accompanied by an estimate of the net

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1 revenues to be deposited in the public school capital outlay
2 fund and the lottery tuition fund for the current and
3 succeeding fiscal years.

4 C. The board shall contract with an independent
5 certified public accountant or firm for an annual financial
6 audit of the authority. The certified public accountant or
7 firm shall have no financial interest in any lottery
8 contractor. The certified public accountant or firm shall
9 present an audit report no later than March 1 for the prior
10 fiscal year. The certified public accountant or firm shall
11 evaluate the internal auditing controls in effect during the
12 audit period. The cost of this financial audit shall be an
13 operating expense of the authority. The legislative finance
14 committee may, at any time, order an audit of any phase of the
15 operations of the authority, at the expense of the authority,
16 and shall receive a copy of the annual independent financial
17 audit. A copy of any audit performed by the certified public
18 accountant or ordered by the legislative finance committee
19 shall be transmitted to the governor, the speaker of the house
20 of representatives, the president pro tempore of the senate,
21 the legislative finance committee and the [~~lottery~~] gaming
22 oversight committee. "

23 Section 5. Section 6-24-28 NMSA 1978 (being Laws 1995,
24 Chapter 155, Section 28) is amended to read:

25 "6-24-28. INTERNAL AUDITOR-- APPOINTMENT-- DUTIES. --

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1 A. The board, with the recommendation and
2 assistance of the chief executive officer, shall employ an
3 internal auditor. The internal auditor, who shall be an
4 employee of the authority, shall be qualified by training and
5 experience as an auditor and management analyst and have at
6 least five years of auditing experience. The internal auditor
7 shall take direction as needed from the chief executive
8 officer and be accountable to the board.

9 B. The internal auditor shall conduct and
10 coordinate comprehensive audits for all aspects of the
11 lottery, provide management analysis expertise and carry out
12 any other duties specified by the board and by law. The
13 internal auditor shall specifically:

14 (1) conduct, or provide for through a
15 competitive bid process, an annual financial audit and
16 observation audits of drawings;

17 (2) create an annual audit plan to be
18 approved by the board;

19 (3) search for means of better efficiency and
20 cost savings and waste prevention;

21 (4) examine the policy and procedure needs of
22 the lottery and determine compliance;

23 (5) ensure that proper internal controls
24 exist;

25 (6) perform audits that meet or exceed

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1 governmental audit standards; and

2 (7) submit audit reports on a quarterly basis
3 to the board, the chief executive officer, the state auditor,
4 the ~~[lottery]~~ gaming oversight committee and the legislative
5 finance committee.

6 C. The internal auditor shall conduct audits as
7 needed in the areas of:

- 8 (1) personnel security;
- 9 (2) lottery retailer security;
- 10 (3) lottery contractor security;
- 11 (4) security of manufacturing operations of
12 lottery contractors;
- 13 (5) security against lottery ticket
14 counterfeiting and alteration and other means of fraudulently
15 winning;
- 16 (6) security of drawings among entries or
17 finalists;
- 18 (7) computer security;
- 19 (8) data communications security;
- 20 (9) database security;
- 21 (10) systems security;
- 22 (11) lottery premises and warehouse security;
- 23 (12) security in distribution;
- 24 (13) security involving validation and
25 payment procedures;

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- 1 (14) security involving unclaimed prizes;
2 (15) security aspects applicable to each
3 particular lottery game;
4 (16) security of drawings in games whenever
5 winners are determined by drawings;
6 (17) the completeness of security against
7 locating winners in lottery games with preprinted winners by
8 persons involved in their production, storage, distribution,
9 administration or sales; and
10 (18) any other aspects of security applicable
11 to any particular lottery game and to the lottery and its
12 operations.

13 D. Specific audit findings related to security
14 invasion techniques are confidential and may be reported only
15 to the chief executive officer or his designee, the board, the
16 governor and the attorney general. "

17 Section 6. Section 6-24-33 NMSA 1978 (being Laws 1995,
18 Chapter 155, Section 33) is amended to read:

19 "6-24-33. UNLAWFUL PURCHASE OF LOTTERY TICKET--
20 PENALTY. --

21 A. It is unlawful for the following persons to
22 purchase a lottery ticket or to share knowingly in the lottery
23 winnings of another person:

24 (1) the chief executive officer, a board
25 member [a member of the lottery oversight committee] or an

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1 employee of the authority; or

2 (2) an owner, officer or employee of a
3 lottery vendor or, in the case of a corporation, an owner of
4 five percent or more of the corporate stock of a lottery
5 vendor.

6 B. Notwithstanding the provisions of Subsection A
7 of this section, the chief executive officer may authorize in
8 writing any employee of the authority and any employee of a
9 lottery contractor to purchase a lottery ticket for the
10 purposes of verifying the proper operation of the lottery with
11 respect to security, systems operation and lottery retailer
12 contract compliance. Any prize awarded as a result of such
13 ticket purchase shall become the property of the authority and
14 shall be added to the prize pools of subsequent lottery games.

15 C. Nothing in this section shall prohibit lottery
16 retailers or their employees from purchasing lottery tickets
17 or from being paid a prize for a winning ticket.

18 D. Certain classes of persons who, because of the
19 unique nature of the supplies or services they provide for use
20 directly in the operation of the lottery, may be prohibited,
21 in accordance with rules adopted by the board, from
22 participating in any lottery in which such supplies or
23 services are used.

24 E. Any person who violates any provision of this
25 section for the first time is guilty of a misdemeanor and

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1 shall be sentenced pursuant to the provisions of Section
2 31-19-1 NMSA 1978.

3 F. Any person who violates any provision of this
4 section for a second or subsequent time is guilty of a fourth
5 degree felony and shall be sentenced pursuant to the
6 provisions of Section 31-18-15 NMSA 1978. "

7 Section 7. REPEAL. --Section 6-24-9 NMSA 1978 (being Laws
8 1995, Chapter 155, Section 9) is repealed.

9 Section 8. EMERGENCY. --It is necessary for the public
10 peace, health and safety that this act take effect
11 immediately.