

**Regular Meeting of Board of Directors
New Mexico Lottery Authority
June 10, 2020 via Teleconference**

MINUTES

Call to Order: Board Chair Reta Jones called the meeting to order at 10:08 a.m. and asked for a roll call. Present and constituting a quorum were: Reta Jones, Sal Baragiola, Nina Thayer, Paul Guerin, Othiamba Umi, Leo Romero, and David Keylon.

Present from NMLA were: David Barden, Carolyn Cabell, Sylvia Jaramillo, Kevin Duda, Michael Boland, and Wilma Atencio. Also, in attendance were Mary Stanford and Steve Beck with INTRALOT and Colin Hunter.

Approve Proposed Agenda: R. Jones entertained a motion. L. Romero made a motion to approve the proposed agenda as presented; second by N. Thayer. Vote: all ayes, no nays. Carried; 7-0.

Approve Minutes of January 8, 2020 Board of Directors Meeting: S. Baragiola stated that at the Board of Directors meeting in January, members were provided a document outlining recommended changes to the Secretary/Treasurer duties described in the Board Bylaws. S. Baragiola recommended this item be placed on the next meeting agenda for consideration and approval. R. Jones asked D. Barden to ensure this item is added to the next Board meeting agenda.

R. Jones entertained a motion. L. Romero made a motion to approve the January 8 meeting minutes as provided; second by N. Thayer. No further discussion. Vote: all ayes, no nays. Carried; 7-0.

Public Comment: None.

REPORTS:

Financial Statements: S. Jaramillo reported highlights from the April 2020 financial statements. S. Jaramillo reported more than \$3.1 million was transferred to the Lottery Tuition Fund for the month of April 2020, making the FY 2020 total transfers \$30.7 million. The total transfers for this fiscal year are \$5.7 million less than in FY 2019 or 15.67% less than last fiscal year's total transfers of \$36.4 million. The total YTD transfers were nearly \$409,000 more than the YTD FY 2020 Revised Budget. The total transferred from the Lottery to education since inception is nearly \$852.8 million.

YTD through April, net instant ticket sales were nearly \$62.3 million. Last fiscal year, net instant ticket sales were more than \$62.4 million, a \$181,000 difference. Net instant ticket sales through April 2020 were \$2.1 million ahead of the YTD FY 2020 Revised Budget.

Total net drawing game sales through April were nearly \$40.1 million. Last year, net drawing game sales were \$59 million. YTD drawing game sales were \$18.9 million or 32% less than last fiscal year. Net drawing game sales were \$1.1 million less than the YTD FY 2020 Revised Budget. This \$18.9 million difference between the two years is mainly due to Powerball sales, which are behind FY 2019 sales by more than \$8.7 million, and Mega Millions sales, which were behind by nearly \$10.7 million.

By April 2019, we had had two large Powerball jackpots of \$758.4 million and \$687.8 million, which were the second and fourth largest Powerball jackpots to date. This year, the largest Powerball jackpot was \$396.9 million and there were smaller jackpots ranging from \$70 million to \$198 million. Last fiscal year, Mega Millions had a \$1.5 billion jackpot. This year the largest Mega Millions jackpot was \$410 million, which was won in Arizona last night. The previous jackpot was \$175 million and there were smaller

jackpots ranging from \$168 million to \$225 million. Not having large jackpots this year has made a difference in our sales. The current jackpots for Powerball and Mega Millions are \$22 million and \$20 million.

Gross Revenues through April were \$102.4 million, \$19 million or 15.67% less than last fiscal year. Gross Revenues were \$1 million more than the projected YTD FY 2020 Revised Budget. Total Operating expenses at the end of April 2020 were 3.08% of gross revenues compared to 3.03% in the previous fiscal year.

Unclaimed prizes transferred to meet the 30% return through April 2020 were \$4.2 million and unclaimed prizes transferred through April 2019 were \$3.3 million. More unclaimed prizes have been used this fiscal year partially because as drawing game sales go down compared to Scratcher sales, the prize payout percentage goes up because Scratcher games' payout is generally higher than drawing games. Through April, the prize payout was 57.8% compared to 57.0% last fiscal year. From July 2007 to April 2020, more than \$48 million of unclaimed prizes has been transferred to the lottery scholarship fund.

P. Guerin asked if the unclaimed prize fund transfer this fiscal year is approximately \$1 million more than last year and what the remaining balance is. S. Jaramillo stated yes, we transferred \$1 million more this year and the remaining balance in the unclaimed prize fund as of April 2020 is \$226,000.

P. Guerin asked if the Lottery needed to use unclaimed prize fund in the future, would there be sufficient funds? S. Jaramillo stated the CEO with Lottery management made changes to the instant ticket program by reducing the prize payout in February 2020 to address the decrease of unclaimed prize funds. D. Barden reported that approximately three months ago (before the pandemic), the Lottery made changes to its instant ticket prize payout. The Lottery reduced its prize payout to 54%. This change took into account Lottery expenses, revenue, and the mandate to transfer 30% of revenue to the State. D. Barden reported instant ticket sales increased during the pandemic but draw games have been significantly lower locally and nationwide. The Lottery is stable now but could face a problem in the future.

D. Keylon asked what the prize payout was previously. D. Barden reported it varied based on ticket price point, but it ranged from 54% for a \$1 game to around 70% for a \$10 game. D. Keylon asked for confirmation that the prize payout went from 65% to 54%. D. Barden stated that is correct. D. Barden reported that the Lottery could not afford to continue offering prizes for instant tickets at the higher level. D. Keylon asked whether the payout change affects the amount of tickets sold D. Barden reported it probably will eventually. The Lottery is doing something that no one else in the lottery industry has done before, by having the prize payout at 54% across the board. Our prize payout was already lower than other states. The Louisiana Lottery has a return mandate of 35%. Louisiana currently has a legislative bill on the Governor's desk reducing this mandate to 25% there was little legislative opposition to the change.

D. Barden reported the Lottery faces a balancing issue each month. The Lottery does not budget to a dollar amount, but rather a percentage amount, which may result in a lower dollar amount being transferred. This is something the Board may consider discussing at a future date. O. Umi asked whether reaching a dollar amount transfer requirement such as \$41 million, as would have been the case had legislation to change the 30% mandate been successful, would have been more difficult to meet than the 30% requirement during this difficult time and when the Lottery is seeing lower revenue.

D. Barden responded that if we had a floor or a different scenario than the 30%, even if it was 25%, we should be able to reach that requirement. The Lottery has been relying on draw game revenues, which have been significantly declining. When there is a strong jackpot year for Powerball or Mega Millions, the following year experiences a decrease. If the Lottery had flexibility with the Scratcher program, we should be able to remain in the \$40 million return range year after year. The CEO and Lottery are open to whatever the Board decides regarding this topic and would follow that policy.

R. Jones reported she would like to discuss having an in-depth meeting, like a retreat with Board members and Lottery management about revenue, scholarships, and other key issues facing the Lottery in these unprecedented times.

N. Thayer asked what was included in the \$123,000 increase in salaries, wages, and benefits. S. Jaramillo responded that the amount was made up of several things, such as Lottery staff receiving an average merit increase of 2.6% last fiscal year. The state health insurance increased 1% in July of last year and this fiscal year there will be a 3% increase. The Lottery also had a full staffing compared to last year; however, we did lose two employees in April and May.

FY 2020 Consolidated Revised Annual Budget: S. Jaramillo provided a brief overview of the FY 2020 Consolidated Revised Annual Budget. Board members were provided a recap sheet of the budget showing the changes. Some of the sales changes were:

- Instant ticket sales were decreased by \$6,000,000.
- Powerball sales were decreased by \$9,000,000.
- Net ticket sales had an overall decrease of \$15,050,000.
- Gross Revenues had an overall decrease of \$14,983,000 or 11.05%.

Game expense line items for prize expense, retailer commissions, on-line vendor fees, and ticket vendor fees were decreased due to the decreases in sales. Promotions expense was reduced by \$85,000 or 45.95% and retailer equipment expense was reduced by \$137,000 or 67.16%. The overall reduction to Game Expenses was 11.03%, which is close to the change in net ticket sales of 11.09%.

All Operating Expenses were reduced. The largest reduction was to salaries, wages, and benefits, which was reduced by \$208,000 or 6.70%. Operating Expenses were reduced by \$491,000 or 11.38%.

The FY 2020 Consolidated Revised Annual Budget is projected to return \$36.2 million to the Legislative Lottery Scholarship Fund, which is \$4,495,000 or 11.05% less than the original budget.

S. Jaramillo requested approval of the FY 2020 Consolidated Revised Annual Budget.

L. Romero asked why the Lottery is revising the budget and does not see the need to do so. S. Jaramillo reported this process has been in place to help us internally look at our expenses and see where were based on sales. D. Barden stated he has also questioned the need for a revised budget and agreed with L. Romero. This is the Board's decision; the revised budget is something the Board has requested in the past. L. Romero stated that adjusting expenditures to the revenue coming in could be done every quarter without changing the entire budget. The Lottery is currently comparing the previous budget year to the revised budget year, which is confusing and unnecessary.

R. Jones reported that in the past, because of games like Powerball being unpredictable it became necessary to do an amended budget because the numbers during the year varied significantly from the original budget. Based on this assessment, it was decided that in the third quarter of each fiscal year, the Lottery would go back through the budget and ensure we were going to achieve the targets we were obligated to meet. The revised budget would give an updated picture of how we were going to meet our goal by June 30. L. Romero stated that the Board members can have a discussion on the revised budget in the future and see if there is value in completing one. R. Jones stated this is one of the issues that can be discussed at the retreat.

O. Umi requested an explanation of the increase in total non-operating revenue. S. Jaramillo deferred to D. Barden, who responded he would pull the information and provide it to the Board. Later in the meeting, D.

Barden reported that the \$61,000 increase to other income in the revised budget is a dividend refund from the Multi-State Lottery Association (MUSL).

No further questions.

R. Jones entertained a motion. D. Keylon made a motion to approve the FY 2020 Consolidated Revised Annual Budget; second by O. Umi. Vote: all ayes, no nays. Carried; 7-0.

FY 2021 Consolidated Original Annual Budget: R. Jones reported that in the past, before the Consolidated Original Annual Budget was brought before the Board, a budget workshop would take place with members of the Board and Lottery management. Due to time constraints and complications with the pandemic and social distancing, the budget workshop was not scheduled this fiscal year.

S. Jaramillo stated that the FY 2021 Consolidated Original Annual Budget and a summary sheet were provided to the Board. Some changes in sales from the FY 2020 Original Budget to the FY 2021 Original Budget include:

- Instant ticket sales decreased \$6,000,000.
- Powerball sales decreased \$10,000,000.
- Mega Millions sales decreased \$1,500,000.
- Net ticket sales overall decreased \$17,150,000.

Game Expense line items were decreased due to the changes in sales. Some accounts like retailer commissions, on-line vendor fees, and ticket vendor fees decreased due to the decrease in projected sales. In order to achieve the 30% return, the prize expense was reduced to 52.88%, in order to balance the budget. Advertising expense was reduced by \$200,000. Shipping and postage increased due to a contractual increase that will take place during the first quarter of FY 2021.

Operating Expenses were reduced by \$177,000. The largest line item in Operating Expenses is salaries, wages, and benefits, and that decreased by \$17,000. One change to salaries, wages, and benefits was adding a new position to the budget for a Deputy Information Technology Administrator taking the organization to 36 employees. In addition, a 3% increase starting on July 1, 2020 for insurance benefits was added to the budget. Because of sales, there will be no salary increases or promotions budgeted for employees for the fiscal year. Except for leases and insurance, which was increased by \$1,000, all other line items of Operating Expenses decreased.

At the end of this month, the loan for the purchase of the Lottery's administrative building and warehouse will be paid in full and therefore interest expense is zero for FY 2021. This loan was paid in five years. The purchase of the building was a better investment for the Lottery than leasing the building.

This budget is projected to return \$35,550,000 to the Legislative Lottery Scholarship Fund, which is a reduction of \$5,145,000 compared to the FY 2020 original budget and a reduction of \$650,000 compared to the FY 2020 revised budget.

S. Jaramillo requested approval of the FY 2021 Consolidated Original Annual Budget.

O. Umi asked if someone can expand on the Deputy IT Administrator position, in particular what is the need for this position and what this position will address within the organization. D. Barden reported over the past five-six years we have had a reduction in staff in the IT department. We have an employee who will be retiring soon, so it is important to bring in someone to work alongside this employee to understand the intricacies of the Lottery's IT department.

D. Keylon asked how there was a \$17,000 decrease in salary, wages, and benefits if we are adding an employee and the cost of insurance is increasing. D. Barden responded it comes down to the timing of staff leaving and coming onboard at different times and levels. S. Jaramillo reported that that the Lottery initially budgeted for three positions (Research Analyst, Communications Manager, and Security Agent) over the past several years. The Lottery added the Agent position in August 2019, but never filled the other two positions. Last year, we budgeted for 38 positions and we currently have 36 positions. We had three positions, eliminated two positions that were not filled, and added the Deputy IT Administrator position.

L. Romero observed that the projected decrease in sales is driving the budget. D. Barden responded that is correct; we look at the revenue and back up to other line items depending on what the transfer amount needs to be. Powerball and Mega Millions encountered problems this year with the pandemic which resulted in the reduction of the starting jackpot prizes for both games. The minimum jackpots went from \$40 million to \$20 million. The changes were due to not having enough revenue to cover the \$40 million jackpot prize if it were to be hit. Our Scratcher program is really the only thing we can control in our portfolio of games.

D. Keyon asked what the cost savings were in purchasing the building. S. Jaramillo reported we have saved about \$150,000 to \$200,000 a year. The Lottery made building improvements which led to reduced monthly utility costs. S. Jaramillo reported we saved over \$300,000 on leases. The Lottery leased the building over 18-19 years. We initially put some cash down and borrowed the remaining balance over a five-year period. K. Duda, Deputy Director of Administration, reported that we paid approximately \$22,000 a month including interest and principal for our mortgage.

No further questions.

R. Jones entertained a motion. L. Romero made a motion to approve the FY 2021 Consolidated Original Annual Budget; second by P. Guerin. Vote: all ayes, no nays. Carried; 7-0.

Disposal of Obsolete, Worn Out, or Unusable Tangible Personal Property: S. Jaramillo reported that the Board has been provided a memo listing various categories of capital and non-capital items that have a current resale value of five thousand dollars or less and are either worn out, unusable, or obsolete to the extent that the items are no longer economical or safe for use by the New Mexico Lottery Authority. All electronic media and licensed computer software will be sanitized or made effectively inaccessible by shredding of any software prior to its disposal and erasure or removal of hard drives from computers and digital equipment with storage capabilities.

S. Jaramillo reported that the State has the first right of refusal with a 30-day time period. After this time, usable items will be disposed of in accordance with the Lottery's Capital Asset Management Policy through the annual public auction held by the Department of Public Safety, advertised in publications widely circulated throughout the state, or by using an acceptable internet website that has been used by other public or corporate entities in the state. Unusable or broken items will be properly disposed. In the event that the Lottery is not able to dispose of personal property under the guidance of either state statute or the Lottery's Capital Asset Management Policy or if the property contains hazardous materials that may not be used safely, the property shall be destroyed and otherwise permanently disposed of in accordance with applicable laws.

R. Jones entertained a motion. D. Keylon made a motion to approve the Disposal of Obsolete, Worn Out, or Unusable Tangible Personal Property as described in the list provided; second by S. Baragiola. Vote: all ayes, no nays. Carried; 7-0.

RFP for Legal Services: C. Cabell reported the NMLA issued an RFP for Legal Services in December 2019. Three proposals were received in January by Conklin, Woodcock & Ziegler; Cuddy & McCarthy, LLP; and Ortiz & Zamora, Attorneys at Law, LLC. The evaluation committee met and reached a consensus

score for each proposal received based on experience and capability, responsibilities, technical capabilities, and cost proposals. The evaluation committee recommended that a contract for Legal Services be awarded to Conklin, Woodcock & Ziegler for a contract term of one year with the option to renew for up to three successive one-year terms at the same prices, terms, and conditions, not to exceed an aggregate term of four years including all extensions and renewals.

C. Cabell requested Board approval for the CEO to enter into contract negotiations with Conklin, Woodcock & Ziegler.

L. Romero asked what law firm had been providing legal services for the Lottery. C. Cabell responded Justine Fox-Young and Adam Baker, who did not submit a proposal. D. Keylon asked what made Conklin, Woodcock & Ziegler stand out as opposed to the other two law firms. C. Cabell responded their breadth of experience, past knowledge of lottery business, and a strong technical proposal.

D. Keylon asked if there were any issues in the past with Conklin, Woodcock, Ziegler. C. Cabell reported that she was not aware of any issues. D. Barden reported no issues in the past and having lottery experience was a plus. D. Barden reported he worked with them for two years when he first came on board in 2013. R. Jones reported Conklin, Woodcock & Ziegler served the Board well in the past.

D. Keylon asked what the Lottery has paid in attorney fees in the past. C. Cabell reported that it has varied over the years: \$4,400 in FY 2020; \$28,600 in FY 2019; \$15,000 in FY 2018; and \$27,000 in FY 2017.

R. Jones entertained a motion. L. Romero made a motion to approve the recommended hiring of Conklin, Woodcock & Ziegler as legal counsel for a term of one year with three one-year renewals and for the CEO to enter into contract negotiations; second by D. Keylon. Vote: all ayes, no nays. Carried; 7-0.

FY 2021 Audit Plan: M. Boland presented Internal Audit's FY 2021 Internal Audit Plan. M. Boland reported that this year's focus will address the challenges of the COVID-19 pandemic crisis affecting or potentially affecting the Lottery. Areas of emphasis will include health and safety of employees, potential business liabilities, controls over automated and outsourced processes, best practices for remote operations, and reassessing the Lottery's business continuity plan. Developing and evolving new mitigation strategies and cost and process efficiencies not related to COVID-19 will also be addressed. This plan is flexible and allows for changes as events unfold and management priorities and business needs evolve. R. Jones stated that this item normally goes before the Finance Audit Committee for detailed analysis and questions.

L. Romero asked if the Internal Audit and external audit work in conjunction or how they relate. M. Boland reported that Internal Audit performs independently and apart from the external auditors. The external auditors conduct the financial audit service of the Lottery's financial statements making sure there are no misstatements. Internal Audit looks at finances, but also looks at operational processes within the Lottery.

R. Jones entertained a motion. D. Keylon made a motion to approve the FY 2021 Internal Audit Plan as submitted; second by P. Guerin. Vote: all ayes, no nays. Carried; 7-0.

Internal Audit Reports (Retailer Licensing Compliance Audit, Gaming System Penetration Testing Engagement, and LOTOS Access Engagement): M. Boland reported that three audit reports and three best practice recommendation reports have been provided to the Board as information. The audit reports have also been provided to the State Auditor and Legislative Finance Committee (LFC) per the Lottery Act.

L. Romero asked who decides what issues will be included on the Internal Audit Plan, for example whether requests are internal or whether they can come from the LFC. M. Boland responded that we go through a risk assessment process to develop the audit plan annually. The input can come from anywhere, including

the CEO, Lottery management, the Board, the State Auditor, or the LFC. Internal Audit has interviews with senior management and other executive staff.

L. Romero stated he can see the work performed in the audit reports, especially in the Retailer Licensing Compliance Audit report. R. Jones stated that typically the audit plan and reports are vetted and approved by the Finance Audit Committee.

D. Keylon asked whether there were areas of concern that need to be addressed. M. Boland responded that he has included his recommendations in the best practice's documents, which have been addressed or are being addressed. M. Boland recommended the Board review the best practice recommendation for the Gaming System Penetration Testing Engagement. More oversight is required and remediation from the vendor side is needed.

CEO Update: D. Barden thanked the Chair and members of the Board for today's meeting and reported we are in unique times with the COVID-19 pandemic social distancing. Lottery management has implemented a strong business continuity plan and we were able to continue our core business with minimal interruptions during this pandemic. Staff continue to telework as much as possible, with limited office time. Staff has done an exceptional job and we continue to do whatever it takes, only more creatively.

D. Barden reported that Powerball YTD sales are down over 38% from last fiscal year or \$9.8 million. Mega Millions YTD sales are down approximately 52% from the last fiscal year or \$11 million. Together this is roughly a \$20 million reduction in sales or about \$6 million in transfers to the State. Jackpot fatigue continues with the major jackpot games and changes in the base Powerball game will be discussed at an upcoming MUSL meeting. Historically there have been three ways to changes a draw game: ticket price increase, matrix change, and adding population.

Since 2016, jackpots have not brought in what they used to. Last night's Mega Millions jackpot was \$410 million, which brought in \$3.7 million in sales over 34 draws. The coverage for that draw was 7.4%, a 92% chance of not getting hit, but it was won in Arizona. In 2016, the Powerball jackpot reached \$1.5 billion and sales were \$21.8 million for 20 draws. In 2017, the jackpot was \$700 million and sales were \$9.1 million for 21 draws. In 2018, the jackpot was \$750 million and sales were \$7.6 million for 22 draws. In 2019, the jackpot prize was \$750 million and sales were \$8.3 million for 26 draws. Jackpot fatigue is real and has impacted sales.

D. Barden reported that management is reviewing all prize structures and actual prize payouts to ensure that prize payouts reflect and meet game specifications. Staff will inform the Board of draw game changes. Due to lagging draw game sales, which occurred before the pandemic, the CEO instructed staff to implement a new payout percentage on all new Scratcher games. This decision was made in order to meet our required monthly transfer of 30%. The Lottery has seen a 3.7% increase in Scratcher sales, which will result in the Lottery meeting its projection of \$80 million.

D. Barden reported that he took a voluntarily reduction in pay this fiscal year for two weeks and will be doing the same this upcoming fiscal year for a total reduction in pay for four weeks.

O. Umi asked when the evaluation for the CEO will take place. D. Barden reported that in the past, the review took place at the end of the CEO's contract period in June or August. D. Barden stated there are four (4) years left on the contract and that an evaluation is determined by the Chair. D. Barden advised that there is no increase for wages, salaries, and benefits in this year's budget.

D. Keylon thanked D. Barden for his taking a reduction in pay, which was a voluntary effort that was not requested by Board but was very much appreciated.

Other: None.

Board Chair

Announcements: R. Jones reiterated a plan for a full-day retreat Board meeting sometime at the end of July, possibly meeting face-to-face with restrictions easing up. R. Jones would like input from the Board about the retreat and for items and issues to discuss in depth at that meeting.

O. Umi stated the retreat was a great idea to get a sense of the Lottery's vision going forward, assuming guidance regarding the pandemic will allow for the meeting. D. Keylon and N. Thayer agreed it is a great idea and are interested in the retreat and learning more about lottery. R. Jones stated that management will work on circulating an agenda for this full-day meeting.


R. Jones stated that all members were assigned to committees and will start scheduling committee meetings prior to the next Board of Directors meeting.

R. Jones asked if August 19 will work for everyone as the next Board of Directors meeting. If this date does not work as we get closer to August, we will consider changing it to August 26, 2020. D. Keylon advised he will be out town the week of August 19. Both O. Umi and L. Romero advised that August 19 works for them. N. Thayer advised that the fourth Wednesday is more problematic but will make the necessary adjustment if needed.

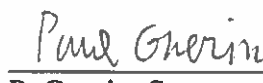
Other: None.

Other Items: None.

Adjournment: R. Jones entertained a motion to adjourn. L. Romero made a motion to adjourn the meeting; second by N. Thayer. Vote: all ayes, no nays. Carried; 7-0. The meeting adjourned at 11:49 a.m.



 R. Jones, Chairman
 Date: 8/30/20



 P. Guerin, Secretary/Treasurer
 Date: 8/21/2020