

**LEGISLATIVE EDUCATION STUDY COMMITTEE  
BILL ANALYSIS**

**Bill Number:** HB 562

**50th Legislature, 1st Session, 2011**

**Tracking Number:** .184363.1SA

**Short Title:** Lottery Scholarship Regulations

**Sponsor(s):** Representative Nora Espinoza and Others

**Analyst:** Ally Hudson and David Harrell

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**Bill Summary:**

HB 562 amends higher education provisions in current law to require that students have US citizenship or lawful permanent or conditional residence to qualify for a Legislative Lottery Scholarship.

HB 562 also repeals a nondiscrimination provision in state law that prohibits public postsecondary educational institutions from denying admission to a student because of the student's immigration status; and that requires those institutions to apply the same residential tuition rate and state-funded financial aid to all students, regardless of immigration status, who have met certain criteria.

**Fiscal Impact:**

HB 562 does not contain an appropriation.

**Fiscal Issues:**

According to an analysis by the Higher Education Department (HED), there are concerns regarding the solvency of the Lottery Tuition Fund. Although the level of solvency varies due to changes in lottery sales, how the lottery funds are invested, and the amount of scholarship funds awarded to students, expenditures currently exceed the incoming revenue. HED's analysis further indicates:

- in FY 09, according to the New Mexico Lottery Authority, the revenues for the Lottery Tuition Fund were \$40.8 million;
- FY 09 marked the third consecutive year of declining lottery sales (down 3.5 percent from the previous fiscal year);
- for FY 11 the projected revenue was approximately \$42 million; and
- for FY 12 the projected revenue will remain constant.

**Substantive Issues:**

As noted under "Bill Summary," above, HB 562 repeals a nondiscrimination provision in state law; however, the title of the bill indicates only the effect on the Legislative Lottery Scholarship. It says nothing about admission policies or tuition rates. This discrepancy

between the title and the text of the bill may violate Article 4, Section 16 of the Constitution of New Mexico, which, in pertinent part, provides as follows:

- The subject of every bill shall be clearly expressed in its title, and no bill embracing more than one subject shall be passed except general appropriation bills and bills for the codification or revision of the laws; but if any subject is embraced in any act which is not expressed in its title, only so much of the act as is not so expressed shall be void.

The analysis by HED provides a brief history of New Mexico's nondiscrimination policy:

- in 2005, the New Mexico Legislature passed legislation providing that a public postsecondary institution may not deny admission to students on the basis of immigration status;
- the legislation provided that all students who have attended a New Mexico high school for at least one year and graduated would be eligible for state-based tuition, scholarships, loans, or other educational benefits available to residents – including the Legislative Lottery Scholarship; and
- these benefits are also available to anyone receiving a General Educational Development (GED) certificate in New Mexico.

Based upon the nondiscrimination principle, HED estimates that, out of a total of 19,696 students, between 189 and 262 undocumented students received the Legislative Lottery Scholarship in academic year 2009-2010.

HED's analysis further explains that, in order to comply with federal and state law, New Mexico's postsecondary institutions will need to develop a mechanism for students to prove their US citizenship, legal permanent residency, or conditional residency for the purpose of lottery scholarship eligibility. For example:

- some colleges may require the completion of the Free Application for Federal Student Aid (FAFSA); and
- it may be necessary for community colleges to develop a process for collecting citizenship and residency information because, as open enrollment institutions, they are not required to determine a student's legal status as an admissions requirement.

The analysis by HED concludes that one of the department's strategic goals is to expand access to postsecondary education. Since its inception, the Legislative Lottery Scholarship has played an important role in increasing the college-going rates of all students in New Mexico.

However:

- according to the *Measuring Up 2008* national report card on higher education, New Mexico receives a "B" for participation because the likelihood of residents enrolling in college by the age of 19 is only fair, and only 29 percent of Hispanic young adults are enrolled in college, compared to 40 percent of Whites;
- the report gives New Mexico an "F" for affordability, reporting that poor and working-class families must devote 28 percent of their income, even after financial aid, to pay for costs at two-year colleges; and
- financial aid to low-income students is low: for every dollar a student receives in Pell Grant aid, the state contributes \$.20.

## **Background:**

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

To qualify for the Legislative Lottery Scholarship a student must:

- be a New Mexico resident;
- have graduated from a New Mexico public or accredited private school or have obtained a New Mexico GED;
- enroll full-time (in at least 12 credit hours) at an eligible New Mexico public college or university, in the first regular semester immediately following high school graduation; and
- obtain and maintain a cumulative grade point average of at least 2.5.

State law also provides for specific accommodations with regard to:

- students with disabilities, clarifying that in no case shall “full time” mean fewer than six credit hours per semester and in no case shall eligibility extend beyond 14 consecutive semesters;
- students whose parents are in the military, allowing a New Mexico resident high school student whose military parents are transferred out of state to receive a New Mexico high school diploma, under certain conditions, and thereby become eligible for state-funded financial aid; and
- individuals that either immediately enlist in, or have recently departed from, the US Armed Forces.

In a report to the Legislative Education Study Committee in December 2010, testimony indicated that, since its inception, the New Mexico Lottery has raised \$459 million for education, and more than 68,000 students have attended college on lottery scholarships.

In 2010, HED formed a Lottery Study Committee to consider strategies to address the status of the Lottery Tuition Fund, increasing enrollments at the state’s public postsecondary institutions, and rising tuition. Because the fund is expending more money than the annual revenues currently provide, HED’s analysis indicates that the Lottery Study Committee is working to analyze data from two- and four-year institutions to determine whether changes to the Legislative Lottery Scholarship eligibility criteria should be made.

## **Related Bills:**

HB 62 *Extend Lottery Application Time*  
HB 92 *Lottery Scholarships for Tribal Colleges*  
HB 359a *Lottery Scholarship Recipient Additions*  
HB 601 *Lottery Scholarships at Tribal Colleges*  
\*CS/SB 226 *Enact “Legislative Lottery Tuition Act”*  
SB 292 *Limit Tuition Increase for Lottery Recipients*