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SENATE BILL 226

**50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

INTRODUCED BY

William H. Payne

FOR THE GOVERNMENT RESTRUCTURING TASK FORCE

AN ACT

RELATING TO HIGHER EDUCATION; ENACTING THE LEGISLATIVE LOTTERY  
TUITION ACT; PROVIDING FOR TUITION ASSISTANCE FOR COMPLETION OF  
AN EDUCATIONAL PROGRAM; REQUIRING THAT TUITION ASSISTANCE  
BECOME A DEBT TO THE STATE IF A STUDENT DOES NOT MAINTAIN  
ACADEMIC AND OTHER ELIGIBILITY OR DROPS OUT OF COLLEGE BEFORE  
GRADUATION; PROVIDING LIMITATIONS AND EXCEPTIONS; REPEALING  
PROVISIONS PERTAINING TO LEGISLATIVE LOTTERY SCHOLARSHIPS;  
AMENDING, REPEALING, ENACTING AND RECOMPILING SECTIONS OF THE  
NMSA 1978.

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

**SECTION 1.** [NEW MATERIAL] SHORT TITLE.--Sections 1  
through 7 of this act may be cited as the "Legislative Lottery  
Tuition Act".

**SECTION 2.** [NEW MATERIAL] FINDINGS AND PURPOSE.--

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1           A. While the original purpose of the lottery  
2 scholarship program was to be an anti-dropout measure to  
3 encourage high school students to remain in school and graduate  
4 by offering the promise of a free college education, neither  
5 high school nor college graduation rates have improved  
6 significantly since 1995. An important benefit of the lottery  
7 scholarship program for the state was the means to provide a  
8 source of revenue other than the state general fund to state-  
9 supported public post-secondary educational institutions.

10           B. After a fifteen-year history of the scholarship  
11 program, the legislature finds that:

12                   (1) although lottery revenue is increasing,  
13 the lottery tuition fund is being depleted through an increase  
14 in participation and ever-higher tuition costs;

15                   (2) the graduation rates for lottery  
16 scholarship recipients are not as high as expected or desired;  
17 and

18                   (3) paying tuition costs for students who do  
19 not graduate is costly for the state.

20           C. The purpose of the Legislative Lottery Tuition  
21 Act is to create a legislative lottery tuition program that  
22 continues the promise of a free college education at one of New  
23 Mexico's state-supported public post-secondary educational  
24 institutions for qualified students but converts that state-  
25 supported tuition assistance into loans for students who do not

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1 complete their college education by receiving an associate's or  
2 bachelor's degree or a career-technical certificate within the  
3 required time. A further purpose of that act is to provide  
4 funding to New Mexico's state-supported public post-secondary  
5 educational institutions through tuition assistance payments.

6 SECTION 3. [NEW MATERIAL] DEFINITIONS.--As used in the  
7 Legislative Lottery Tuition Act:

8 A. "academic eligibility" means maintenance of a  
9 2.5 grade point average or higher on a 4.0 scale for a full-  
10 time academic course schedule;

11 B. "department" means the higher education  
12 department;

13 C. "full time" means at least fifteen academic  
14 credit hours per semester; and

15 D. "program" means the legislative lottery tuition  
16 program.

17 SECTION 4. [NEW MATERIAL] LEGISLATIVE LOTTERY TUITION  
18 PROGRAM--CREATED--QUALIFIED STUDENTS.--

19 A. The "legislative lottery tuition program" is  
20 created in the department. To the extent that funds are made  
21 available by the legislature from the lottery tuition fund, and  
22 except as otherwise provided in the Legislative Lottery Tuition  
23 Act, the program shall provide tuition assistance at a state-  
24 supported public post-secondary educational institution to a  
25 qualified student for no more than eight semesters of higher

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1 education as long as the student continues to qualify each  
2 semester and the student receives an associate's or bachelor's  
3 degree or a career-technical certificate within that period.  
4 Except as otherwise provided in that act, if a student fails to  
5 maintain academic eligibility and other qualifications or fails  
6 to graduate, the student shall owe the state the cost of the  
7 tuition paid by the program.

8 B. The program is available only to resident full-  
9 time students who:

10 (1) not later than one academic year after  
11 completion of a high school curriculum and graduation from a  
12 public or accredited private New Mexico high school or  
13 receiving a graduate equivalent diploma before the age of  
14 twenty, are accepted for entrance to and attend a state-  
15 supported public post-secondary educational institution; or

16 (2) within one hundred twenty days of  
17 completion of a high school curriculum and graduation from a  
18 public or accredited private New Mexico high school, begin  
19 service in the United States armed forces and who within one  
20 year of completion of honorable service or medical discharge  
21 from the service attend a state-supported public post-secondary  
22 educational institution.

23 C. In addition to the requirements for initial  
24 qualification provided in Subsection B of this section, a  
25 student must complete the first semester of attendance at a

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1 state-supported public post-secondary educational institution  
2 as the qualifying semester for which tuition assistance will  
3 not be provided. The student must attend full time and have a  
4 2.5 grade point average or higher on a 4.0 scale in the  
5 qualifying semester.

6 D. Except as otherwise provided in the Legislative  
7 Lottery Tuition Act, after the qualifying semester, a qualified  
8 student is eligible for the program for a maximum of eight  
9 semesters over five academic years for a bachelor's degree.  
10 The maximum number of semesters or other period for educational  
11 programs that terminate in an associate's or career-technical  
12 certificate shall be determined by the department based on the  
13 requirements of the educational program but shall not be more  
14 than five semesters in three academic years. Transfer between  
15 or among the state-supported two- and four-year public post-  
16 secondary educational institutions does not affect eligibility  
17 for the program. The student must continue to maintain  
18 academic eligibility, residency and other qualifications of the  
19 program as provided by that act and rules of the department  
20 adopted and promulgated to implement the provisions of that  
21 act. The department shall provide by rule for how a student  
22 may maintain program qualifications in a health or other  
23 emergency situation.

24 E. The department shall prepare guidelines setting  
25 forth explicit student continuing eligibility criteria and

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1 guidelines for administration of the program. Guidelines shall  
2 be distributed to the board of regents of each institution to  
3 enable a uniform availability and applicability of the program  
4 to qualified New Mexico resident students.

5 SECTION 5. [NEW MATERIAL] LIMITATIONS AND EXCEPTIONS.--

6 A. The program shall not provide tuition assistance  
7 for remedial or development courses, and remedial or  
8 development courses do not count in the calculation of full-  
9 time credit hours. If a student is required by the public  
10 post-secondary educational institution to take remedial or  
11 development courses, the student is responsible for the cost of  
12 those courses.

13 B. If a qualified student transfers from a New  
14 Mexico state-supported public post-secondary educational  
15 institution to a college or university other than another New  
16 Mexico state-supported public post-secondary educational  
17 institution, maintains academic eligibility and graduates with  
18 a bachelor's degree, the student shall be deemed to have met  
19 the requirements of the program and will not be required to pay  
20 back the tuition assistance provided at the New Mexico state-  
21 supported educational institution.

22 C. If a student is unable to take core or degree-  
23 required courses because the courses are not offered when  
24 promised by the public post-secondary educational institution,  
25 the student's tuition assistance may continue for one more

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1 semester beyond the maximum number of semesters provided in  
2 Subsection A of Section 4 of the Legislative Lottery Tuition  
3 Act.

4 D. If a student is on track to graduate with a  
5 bachelor's degree, as determined by the public post-secondary  
6 educational institution, but has used up the number of  
7 semesters allowed for the program, the department may allow a  
8 contract extension for no more than one semester. During the  
9 contract extension, the student will not receive tuition  
10 assistance but will not be considered nonqualifying for  
11 purposes of converting tuition assistance to debt.

12 E. Recognizing that students with disabilities may  
13 require special accommodations, the department, in consultation  
14 with the student and the office at the public post-secondary  
15 educational institution that serves students with disabilities,  
16 shall review the definition of "full time" and the maximum  
17 number of consecutive semesters of eligibility and adjust  
18 either or both as deemed reasonable and appropriate based on  
19 the student's disability needs; provided that in no case,  
20 however, shall "full time" mean fewer than six credit hours per  
21 semester and in no case shall eligibility extend beyond  
22 fourteen consecutive semesters.

23 SECTION 6. [NEW MATERIAL] APPLICATION--CONTRACT.--

24 A. A New Mexico resident student who wishes to  
25 participate in the program shall apply through the public post-

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1 secondary educational institution's financial aid office. The  
2 department shall determine the form of the application. The  
3 institution is responsible for ensuring initial and continuing  
4 academic and other eligibility for the program and shall keep  
5 the department apprised of students who are no longer qualified  
6 to receive tuition assistance and the reasons for  
7 disqualification.

8 B. As part of the application and prior to  
9 receiving tuition assistance from the program, a student must  
10 declare the intention to graduate with an associate's or  
11 bachelor's degree or a career-technical certificate in a  
12 declared major and provide an estimate of the time needed,  
13 within eight semesters, to graduate. A student may declare the  
14 intention to receive both an associate's and a bachelor's  
15 degree in a declared major. A student may change a declared  
16 major but must graduate within the allowable semesters.

17 C. Participation in the program is a contract  
18 between the student and the department on behalf of the state  
19 to the effect that, in exchange for tuition assistance, the  
20 student will maintain academic and other eligibility and  
21 graduate with a degree or certificate, as approved by the  
22 public post-secondary educational institution. Failure of the  
23 student to maintain qualifications of the program shall result  
24 in the amount of tuition assistance paid by the lottery tuition  
25 fund to become a debt due and owing to the state. The contract

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1 shall provide for the payment by the state of full or partial  
2 tuition assistance, as determined annually by the department in  
3 accordance with money available from the lottery tuition fund  
4 and appropriated by the legislature, which assistance shall be  
5 conditioned on either the student maintaining program  
6 eligibility and obtaining a degree or certificate or the  
7 student repaying all of the tuition assistance as a debt. The  
8 full amount of program funds provided on behalf of a student  
9 who fails to complete the student's education shall become a  
10 debt due immediately upon termination of eligibility. The  
11 department, in consultation with the student, shall establish  
12 terms of repayment, including interest at the prime rate  
13 published in the eastern print edition of the *Wall Street*  
14 *Journal*. A debt owed pursuant to the Legislative Lottery  
15 Tuition Act shall not accrue interest until the department  
16 determines that the tuition assistance recipient has failed to  
17 maintain program eligibility, drops out of school or fails to  
18 complete the educational program leading to a degree or  
19 certificate.

20 D. The department shall establish procedures for  
21 collecting debts owed it on behalf of the state pursuant to the  
22 Legislative Lottery Tuition Act and may contract with one or  
23 more attorneys or law firms or with any other private business  
24 concern to assist the department in collecting any debt created  
25 pursuant to that act. A contract shall not be entered into

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1 pursuant to this section unless proposals have been sought from  
2 two or more qualified firms.

3 SECTION 7. [NEW MATERIAL] DEPARTMENT--DETERMINATION OF  
4 TUITION ASSISTANCE--USE OF LOTTERY TUITION FUND.--Prior to June  
5 1 of each year, the department shall determine the amount of  
6 money available for tuition assistance at state-supported  
7 public post-secondary educational institutions. Based on the  
8 amount appropriated by the legislature from the lottery tuition  
9 fund and on the projected enrollment of qualified students at  
10 all the institutions, the department shall establish the  
11 percentage of tuition that shall be awarded for qualified  
12 students attending the institutions. The percentage of tuition  
13 awarded shall be the same for each institution, regardless of  
14 the actual cost of tuition at each institution. Tuition  
15 assistance shall be provided directly to the public post-  
16 secondary educational institution for credit to the student's  
17 tuition obligation.

18 SECTION 8. Section 6-24-23 NMSA 1978 (being Laws 1995,  
19 Chapter 155, Section 23, as amended) is recompiled into the  
20 Legislative Lottery Tuition Act and is amended to read:

21 "[~~6-24-23.~~] LOTTERY TUITION FUND CREATED--PURPOSE.--

22 A. The "lottery tuition fund" is created in the  
23 state treasury. The fund shall be administered by the  
24 [~~commission on higher education~~] department. Earnings from  
25 investment of the fund shall accrue to the credit of the fund.

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1 Tuition assistance loan repayments shall be deposited in the  
2 fund. Any balance in the fund at the end of any fiscal year  
3 shall remain in the fund for appropriation by the legislature  
4 as provided in this section.

5 B. Money in the lottery tuition fund is  
6 appropriated to the [~~commission on higher education~~] department  
7 for distribution to New Mexico's public post-secondary  
8 educational institutions to provide tuition assistance for New  
9 Mexico resident undergraduates as provided by [~~law~~] the  
10 Legislative Lottery Tuition Act."

11 SECTION 9. Section 21-13-10 NMSA 1978 (being Laws 1963,  
12 Chapter 17, Section 9, as amended) is amended to read:

13 "21-13-10. BOARD DUTIES.--

14 A. It is the duty of the community college board to  
15 determine financial and educational policies of the community  
16 college. The community college board shall provide for the  
17 management of the community college and execution of these  
18 policies by selecting a competent president for the community  
19 college, and, upon the president's recommendation, the board  
20 shall employ other administrative personnel, instructional  
21 staff or other personnel as may be needed for the operation,  
22 maintenance and administration of the community college.

23 B. The community college board shall have the power  
24 to fix tuition and fee rates for resident and nonresident  
25 students of the community college district, to accept gifts, to

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1 accept federal aid, to purchase, hold, sell and rent property  
2 and equipment and to promote the general welfare of the  
3 institution for the best interest of educational service to the  
4 people of the community college district.

5 ~~[G.—To the extent that funds are made available by~~  
6 ~~the legislature from the lottery tuition fund, the community~~  
7 ~~college board shall award legislative lottery scholarships for~~  
8 ~~qualified resident students attending their respective~~  
9 ~~institutions.~~

10 ~~D.—The legislative lottery scholarships authorized~~  
11 ~~in this section shall apply only to full-time resident students~~  
12 ~~who, immediately upon completion of a high school curriculum at~~  
13 ~~a public or accredited private New Mexico high school or upon~~  
14 ~~receiving a graduate equivalent diploma, are accepted for~~  
15 ~~entrance to and attend a community college.—Each legislative~~  
16 ~~lottery scholarship shall be awarded for up to two consecutive~~  
17 ~~years beginning the second semester of the recipient's first~~  
18 ~~year of enrollment, provided that the recipient has maintained~~  
19 ~~residency in New Mexico and maintained a grade point average of~~  
20 ~~2.5 or higher on a 4.0 scale during the first semester of full-~~  
21 ~~time enrollment.~~

22 ~~E.—The higher education department shall prepare~~  
23 ~~guidelines setting forth explicit student continuing~~  
24 ~~eligibility criteria and guidelines for administration of the~~  
25 ~~legislative lottery scholarship program.—Guidelines shall be~~

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1 ~~distributed to community college boards to enable a uniform~~  
2 ~~availability of the resident student lottery tuition~~  
3 ~~scholarships.~~

4 ~~F. For purposes of the legislative lottery~~  
5 ~~scholarship program as it applies to students with disabilities~~  
6 ~~who may require special accommodations, the higher education~~  
7 ~~department, in consultation with the student and the office at~~  
8 ~~the community college that serves students with disabilities,~~  
9 ~~shall review both the definition of "full time" and the maximum~~  
10 ~~number of consecutive semesters of eligibility and adjust~~  
11 ~~either or both as deemed reasonable and appropriate, based on~~  
12 ~~the student's disability needs. In no case, however, shall~~  
13 ~~"full time" mean fewer than six credit hours per semester, and~~  
14 ~~in no case shall eligibility extend beyond fourteen consecutive~~  
15 ~~semesters.]"~~

16 SECTION 10. REPEAL.--Sections 21-1-4.3, 21-1-4.4 and  
17 21-16-10.1 NMSA 1978 (being Laws 1996, Chapter 71, Sections 3,  
18 4 and 6, as amended) are repealed.

19 SECTION 11. APPLICABILITY.--The Legislative Lottery  
20 Tuition Act applies to students enrolling in the fall 2011  
21 semester of a public post-secondary educational institution as  
22 their qualifying semester.

23 SECTION 12. EFFECTIVE DATE.--The effective date of the  
24 provisions of this act is July 1, 2011.