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FISCAL IMPACT REPORT

ORIGINAL DATE 2/09/06

SPONSOR Tsosie LAST UPDATED _____ HB _____

SHORT TITLE Lottery Scholarship Expense and Eligibility SB 625

ANALYST Williams

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY06	FY07		
	\$120.0	Recurring	College Affordability Scholarship Fund -- interest income lottery intercept
	\$2,200.0	Recurring	College Affordability Endowment Fund – tribal gaming revenue intercept
	\$50.0	Recurring, beginning in FY08	College Affordability Scholarship Fund--- interest income --- tribal revenue sharing intercept

(Parenthesis () Indicate Expenditure Decreases)

Relates to numerous student financial aid bills, including lottery scholarship and college affordability

Relates to Appropriation in the General Appropriation Act for \$49 million for the college affordability endowment fund

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY06	FY07	FY08		
	No impact		Recurring	Lottery Tuition Fund ---- operating expense cap
	-\$5,285.8.0	-\$5,415.4	Recurring	Lottery Tuition Fund
	\$5,285.0	\$5,285.0	Recurring	College Affordability Endowment Fund
	\$120.0	\$245.0	Recurring	College Affordability Endowment Fund – interest income --- lottery intercept
	\$120.0	\$245.0	Recurring	College Affordability Scholarship Fund---interest income lottery intercept
	Earmarks General Fund Revenue essentially reducing amount available for legislative appropriation by \$2,200.0	Earmarks General Fund Revenue essentially reducing amount available for legislative appropriation by \$2,200.0	Recurring	General Fund
		\$50.0	Recurring	College Affordability Endowment Fund – interest income --- tribal revenue sharing intercept
		\$50.0	Recurring	College Affordability Scholarship Fund---interest income --- tribal revenue sharing intercept

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Higher Education Department (HED)

New Mexico Lottery Authority (NMLA)

SUMMARY

Synopsis of Bill

The bill makes numerous changes to state student financial aid programs:

- Intercepts 16 percent of net revenues (net profits) of the New Mexico Lottery Authority for the College Affordability Endowment Fund;
- Distributes the remaining 84 percent of net revenues (net profits) of the New Mexico Lottery Authority to the lottery tuition fund for scholarships;
- Expands eligibility for college affordability scholarships to tribal colleges;
- Defines tribal colleges as tribally, federally or congressionally chartered post-secondary educational, accredited institutions which includes Southwestern Indian Polytechnic Institute, Crownpoint Institute of Technology, Institute of American Indian Arts and the New Mexico campus of Dine College.

Further, the bill earmarks general fund revenue to the extent that 5 percent of tribal gaming revenues dedicated to the general fund would be transferred each August 1 to the college affordability fund. This calculation would be based on prior fiscal year actual receipts.

The bill also caps operating expenses of the New Mexico Lottery Authority at 22 percent of gross annual revenues from the sale of lottery tickets. Finally, the bill updates current statute for the creation of the Higher Education Department.

FISCAL IMPLICATIONS

Cap on Operating Expenses. According to the report *Individual Development Accounts* report by Think New Mexico, Fall 2005, New Mexico Lottery spends 19.4 percent of lottery revenues on operating costs. As such, it is not clear that the cap on annual operating expenses of 22 percent specified in Section 2(A) of the bill would change distributions.

Lottery Revenue Intercept. The bill earmarks 16 percent of lottery net revenues (net profits) for the college affordability endowment fund. This results in a reduction in funds available for lottery scholarships of \$5.3 million in FY07 with an associated increase in fund balances for the college affordability endowment, based on current, consensus lottery revenue estimates (see attached). The intercept of lottery revenues accelerates funding pressures on the lottery tuition fund to address future estimated costs of scholarships.

The college affordability endowment would generate investment income which is then split between the college affordability endowment fund and the college affordability scholarship fund; assuming the continued practice of investing in overnights with the Office of the State Treasurer at 4.5 percent interest, approximately \$120.0 thousand and \$245.0 thousand in FY07 and FY08

would be generated for the two funds. Investing balances with the State Investment Council would increase interest income to about 8 percent.

Earmarking General Fund Revenues. The bill earmarks general fund revenue to the extent that 5 percent of tribal gaming revenues dedicated to the general fund would be transferred each August 1 to the college affordability endowment fund. This calculation would be based on prior fiscal year actual receipts. Based on the February 2006 consensus revenue estimates, the reduction in general fund revenue available to the legislature for appropriation would be about \$2.2 million per year.

This bill earmarks general fund revenues, essentially setting precedent for earmarks beyond those currently existing for public schools.

This bill creates provides for continuing appropriations. The LFC has concerns with including continuing appropriation language, as earmarking reduces the ability of the legislature to establish spending priorities.

Finally, the distribution to the college affordability endowment fund would generate investment income which would then be distributed to the college affordability endowment fund and the college affordability scholarship fund in FY08, roughly \$50.0 thousand for each fund based on overnight investments. Investing balances with the State Investment Council would increase interest income to about 8 percent.

Expanding college affordability program to tribal colleges. The bill broadens the base of eligible students who could increase demands on the fund for awards (although distributions would be capped by availability of funding, which is addressed in this bill). Tribal institutions are not currently required to provide student data to CHE. Based on HED information on the number of students attending tribal colleges with Pell grant eligibility, the additional impact on the fund would be \$120.0 thousand if all students at tribal colleges received awards in the first year.

SIGNIFICANT ISSUES

NMLA notes: “By capping the operating expenses to 22%, this would limit the lottery’s ability to compete in changing economic and competitive environments. In addition, this bill would limit the lottery’s ability to function as an enterprise. According to state statutes, the lottery was created as a corporate business structure and passage of this bill is contradictory to that intent and may have an impact on the lottery’s long term obligations such as contractual issues with ticket print vendors, on-line vendors, advertising, etc...which may require to buy outs by the lottery at a higher cost and impact less favorable pricing in the future, locally and nationally.”

NMLA expresses concerns that bills to expand eligibility and reduce net profits transfers to the lottery tuition fund may require additional revenue that the Lottery may not be able to generate.

In related analyses, HED and PED note:

- “The tribal colleges in New Mexico are chartered by the Navajo Nation, Bureau of Indian Affairs and Congress and are in a unique funding situation. They do not receive funding from state government due to their status as trust territories, and tribal governments cannot levy property taxes. This is in accord with treaty obligations and

trust responsibility between sovereign Indian tribes or nations and the U.S. government. Most funding comes from the Tribally Controlled College and University Assistance Act of 1978 (TCCUAA), which is administered by the Bureau of Indian Affairs. Funds, primarily from Title I, are allocated to colleges based on the number of Indian students from federally recognized tribes that are enrolled. The lack of state jurisdiction over tribes, including tribal colleges, creates a challenge in how HED will prepare guidelines and administer the lottery tuition scholarship fund to tribal colleges that are chartered either by the tribe, Bureau of Indian Affairs or Congress. These issues of nation-to-nation jurisdictions will need to be worked out.

- The unique charter status of tribal colleges creates a challenge in how the Tribal College Scholarship funds will be allocated, administered and adhered to in regards to performance accountability.
- HED as a state entity has no jurisdiction over tribes and tribal colleges. These challenges will have to be addressed.”

The College Affordability program is a new, state need-based student financial aid program with renewable awards, depending on eligibility, of up to \$1,000. Note grants from the College Affordability Act could be used to address expenses, such as room, board, books and supplies as well as tuition.

In related analyses, executive branch fiscal impact reports note: “The four tribal colleges in New Mexico offer Associate's and Bachelor's degrees in a variety of academic disciplines and offer certificate and associates degrees. The majority of the students who attend tribal colleges are non-traditional, female, American Indian, and first generation college students....American Indian students continue to have the lowest representation in higher education and make up less than 1% of college enrollment... Tribal colleges are located on or near tribal reservations, American Indian students who enroll in tribal colleges are most likely to graduate due to the support of family, extended family, and a college student population that reflects their culture and identity. Statistics indicate that more than 50% of those students who transfer from tribal colleges into four-year public postsecondary institutions graduate....“

ADMINISTRATIVE IMPLICATIONS

Data reporting by tribal colleges to HED institutions would be needed.

OTHER SUBSTANTIVE ISSUES

Accreditation status of Crownpoint Institute of Technology is not clear at the present time.

In related analyses, Department of Indian Affairs notes tribal Colleges were created in response to the higher education needs of American Indians, and generally serve geographically isolated populations that have no other means of accessing education beyond the high school level. Tribal colleges have become increasingly important for educational opportunities for American Indian students, an importance achieved in a relatively brief period of time. Tribal Colleges are unique institutions that combine personal attention with cultural relevance, in such a way as to encourage American Indians - especially those living on reservations - to overcome the barriers they face to higher education. (American Indian Higher Education Consortium, www.aihec.org)

The bill would address areas important to Tribal communities:

1. Provide scholarship assistance to Native American students enrolled in tribal colleges especially those with financial needs with satisfactory academic performance;
2. Increase the enrollment of Native American students at Tribal colleges
3. Allow affordable access for Native American students seeking degrees in tribal colleges (for Indian communities: parents, extended relatives, clan relatives, brothers, sisters)

The bill may be in conflict with Article 12, Section 3 of the New Mexico Constitution which specifies “The schools, colleges, universities and other educational institutions provided for by this constitution shall forever remain under the exclusive control of the state, and no part of the proceeds arising from the sale or disposal of any lands granted to the state by congress, or any other funds appropriated, levied or collected for educational purposes, shall be used for the support of any sectarian, denominational or private school, college or university.” Further, there may be considerations of the anti-donation clause in Article 9, Section 14 and Article 4, Section 31 regarding absolute control of the New Mexico Constitution.

POSSIBLE QUESTIONS

1. Is the bill in conflict with the New Mexico Constitution?
2. If Crownpoint Institute of Technology is successful in its application for accreditation, when would the evaluation process conclude and the designation occur?
3. What data reporting requirements would be needed for enactment of this bill?
4. Given the wide range of student eligibility and expense eligibility under the College Affordability program, is there a plan to prioritize needs?
5. How many students would receive scholarships/grants in the first year of the program if the \$50 million appropriation to the endowment fund recommendation of the LFC and the Executive is enacted?
6. How will additional funds for the endowment fund be obtained? What is the target amount of funding for the endowment fund?
7. How will performance outcomes of the new program be measured?
8. Who would evaluate student eligibility to determine awards ---- HED or the institutions?
9. How would HED and institutions administer the provisions of the bill?

AW/yr