

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill No: HB 709

49th Legislature, 1st Session, 2009

Short Title: Lottery Scholarships for Tribal Colleges

Sponsor(s): Representative Eliseo Lee Alcon and Others

Analyst: Pamela Herman

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Bill Summary:

HB 709 amends the *New Mexico Lottery Act* to extend to resident undergraduates attending tribal colleges in New Mexico the opportunity to participate in the lottery scholarship program, and provides for distribution of funds from the Lottery Tuition Fund to tribal colleges.

HB 709 also creates a new section of law defining eligible institutions and students and requiring the Higher Education Department (HED) to prepare student eligibility guidelines and enter into agreements with tribal colleges for audits of the program.

Among its provisions, HB 709 amends the *New Mexico Lottery Act* to:

- include resident undergraduates at tribal colleges in the lottery tuition scholarship program; and
- include tribal colleges among those to whom funds are distributed from the Lottery Tuition Fund, which is administered by HED, to provide tuition assistance for New Mexico resident undergraduates.

HB 709 also creates a new section of law controlling the award of the scholarships, by:

- defining “tribal college” to mean a tribally, federally or congressionally chartered postsecondary educational institution located in New Mexico that is accredited by the North Central Association of Colleges and Schools;
- allowing tribal colleges to award tuition scholarships for qualified resident students to the extent that funds are made available by the Legislature from the Lottery Tuition Fund;
- authorizing award of the scholarships for up to four consecutive years, beginning the second semester of the recipient’s first year of enrollment, only to full-time resident students who:
 - on completion of a high school curriculum at a public or accredited private high school or receiving a general educational development (GED) certificate:
 - immediately are accepted at and attend a tribal college;
 - maintain residency in New Mexico; and
 - maintain a 2.5 or higher grade point average on a 4.0 scale during the first semester of enrollment; and

- authorizing awards also to full-time resident students who:
 - within 120 days of completing a high school curriculum at a public or accredited private high school or receiving a GED, begin service in the US armed forces; and
 - within 120 days of honorable service or medical discharge are accepted at and attend a tribal college; and
- requiring HED to:
 - prepare guidelines outlining student continuing eligibility criteria, as well as guidelines for administration of the tuition scholarship program at tribal colleges;
 - distribute these guidelines to governing boards of each tribal college to enable uniform scholarship availability; and
 - enter into agreements with tribal colleges that allow for financial and programmatic audits of the scholarship program.

Fiscal Impact:

HB 709 does not make an appropriation.

According to HED, there would be a recurring fiscal impact to the Lottery Tuition Fund of approximately \$176,500, based on an estimated 265 eligible students annually.

HED states that in academic year 2006-2007, approximately 2,162 students were enrolled in tribal colleges in New Mexico, representing approximately 17 percent of all Native American students enrolled in state public and tribal postsecondary institutions. Of these, HED estimates that less than 12 percent of the total would be eligible for the tribal college lottery scholarship program.

Issues:

There are four colleges that meet the definition of a tribal college under HB 709:

- *Southwest Indian Polytechnic Institute (SIPI)* in Albuquerque, a federally owned and operated tuition-free two-year community college that provides certificate and associate degree programs to approximately 800 students annually, all of whom are Native American;
- *Navajo Institute of Technology* (formerly *Crownpoint Institute of Technology*), a federal land grant two-year college chartered by the Navajo Nation that provides technical vocational training and certificate programs to approximately 600 students annually;
- *The Institute of American Indian Arts (IAIA)* in Santa Fe, a congressionally chartered land grant four-year fine arts college with an annual enrollment of approximately 230 students annually; and
- *Diné College*, with campuses in Crownpoint and Shiprock, a federal land grant two-year college chartered by the Navajo Nation whose main campus is in Tsaile, Arizona, with certificate and associate degree programs in New Mexico that serve approximately 540 students annually.

PED notes the following in its agency bill analysis:

- tribal colleges are located on or near tribal reservations, and students who enroll in them are likelier to graduate thanks to family support and a college student population that reflects their culture and identity;
- tribal colleges are often the only postsecondary institutions within some of New Mexico's poorest rural areas, and benefit their communities by encouraging economic development, with broad benefits to the state as a whole;
- tribal colleges are able to provide personalized attention to students to help them overcome economic and social barriers to success;
- the majority of tribal college students are non-traditional, female, Native American and first-generation students; and
- more than 50 percent of tribal college graduates transfer to four-year public postsecondary institutions; and approximately 50 percent of those students go on to graduate.

Statutory Issues

HB 709 would extend the lottery tuition scholarship program to students at tribal colleges in New Mexico. However, if the bill is enacted, students at tribal colleges might be treated differently from other lottery scholarship recipients in two possible ways.

- In 2007, the Legislature amended the existing Legislative Lottery Scholarship to provide that, in the case of students with disabilities who may require special accommodations, the definition of "full-time" and the maximum number of consecutive semesters of eligibility could be adjusted based on the student's disability needs, to no fewer than six credit hours per semester and eligibility for no longer than 14 consecutive semesters. HB 709 contains no such provision for tribal college students with disabilities.
- Also in 2007, the Legislature amended the Legislative Lottery Scholarship to provide that scholarships may be awarded for up to two years to full-time resident students who transfer from a two-year "public" institution to one of the four-year institutions, under certain circumstances. It is not clear if tribal colleges are considered "public" for the purposes of awards to students who transfer from those colleges to public four-year institutions.

Constitutional Issues

HB 709 may also raise issues related to three provisions of the Constitution of the State of New Mexico, each known as the "anti-donation clause":

- Article IV, Section 31 of the Constitution of the State of New Mexico states, "No appropriation shall be made for. . .educational. . .purposes to any person, corporation, association, institution or community, not under the absolute control of the state"
- However, a 1979 Attorney General Opinion stated that a bill proposing scholarships for student at private colleges might not violate Article IV, Section 31 because funds were appropriated to the Board of Educational Finance, a state agency that would have control of the expenditure of the appropriation. HB 709 deals with funds in the Lottery Tuition Fund, which is administered by HED, a state agency.

- Article IX, Section 14 of the New Mexico Constitution states, “Neither the state nor any county, school district or municipality, except as otherwise provided in this constitution, shall directly or indirectly lend or pledge its credit or make any donation to or in aid of any person, association or public or private corporation”
- A 1997 Attorney General opinion determined that a publicly-funded postsecondary institution may use public money for scholarships if the criteria used to award them are education-related and applied in a reasonable and even-handed manner. The opinion did not address the question of a postsecondary institution not funded by the state.
- However, in an October 1996 letter, the New Mexico Attorney General expressed the opinion that tribally controlled high schools were not private schools within the meaning of the anti-donation clause, and thus could receive appropriations from the General Fund for capital projects.
- Finally, Article XII, Section 3 of the New Mexico Constitution states, “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.”
- However, the 1979 Attorney General opinion referenced above declared that “to the extent that the tuition grants proposed. . .are made to the students upon their application, and not to the private college. . .the bill does not authorize the direct support of private schools. This distinction may be sufficient to avoid a violation of Article XII, Section 3.” The Attorney General also pointed to a 1976 New Mexico Supreme Court decision that found that although public money paid to members of a religious order teaching in public schools would go to the religious order, it was not support in violation of Article XII, Section 3.
- The Student Choice Grant program, enacted in 1983, represents a precedent for the creation in statute of a state tuition assistance program for students at non-state controlled educational institutions. Student Choice Grants are available to New Mexico residents who meet certain criteria and who attend independent accredited nonprofit, nonsectarian four-year institutions of higher education in the state. The Student Choice Grant program is funded by recurring appropriations to HED from the General Fund. According to a 2008 Legislative Finance Committee program evaluation of HED financial aid programs, approximately \$1.2 million was awarded in Student Choice Scholarships in academic year 2006-2007.

Related Bills:

HB 49 *Tribal Colleges in Dual Credit Program*

CS/HB 50 *American Indian Post-Secondary Education Act*

HB 740 *Dual Credit Program for Additional Students*