

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: HB 601

50th Legislature, 1st Session, 2011

Tracking Number: .185461.1

Short Title: Lottery Scholarships at Tribal Colleges

Sponsor(s): Representative Sandra D. Jeff and Others

Analyst: Ally Hudson

Date: March 3, 2011

Bill Summary:

HB 601 amends and enacts higher education provisions in law to provide for the distribution of an amount equal to 1.0 percent of tribal gaming revenue for Legislative Lottery Scholarships for students attending tribal colleges.

The bill also defines two terms:

- *tribal gaming facility* means a gaming facility on land approved for such a facility by the federal government pursuant to the federal *Indian Gaming Regulatory Act* controlled by a tribe and operated pursuant to a Class III Tribal-State Gaming Compact; and
- *tribe* means a federally recognized Indian nation, tribe, or pueblo located wholly or partially in New Mexico that has entered into a Class III Tribal-State Gaming Compact with the state.

In addition, HB 601 amends the purpose of the *New Mexico Lottery Act* and the Lottery Tuition Fund to include tribal colleges in the Legislative Lottery Scholarship program.

Among its other provisions, the bill creates a new section of law controlling the award of the scholarships. Among its provision, this new section:

- defines *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;
- allows 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;
- authorizes award of a scholarship 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, upon 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 (GPA) on a 4.0 scale during the first semester of enrollment; and

- authorizes 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
- requires the Higher Education Department (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.

Finally, HB 601 contains an effective date of July 1, 2011.

Fiscal Impact:

HB 601 provides for a distribution equal to 1.0 percent of the net receipts of revenue sharing, received pursuant to a Class III Tribal-State Gaming Compact for a tribal gaming facility, to be made to the Lottery Tuition Fund.

Fiscal Issues:

According to the analysis by 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 \$42.0 million; and
- for FY 12 the projected revenue will remain constant.

According to the bill analysis from HED, during the 2008-2009 academic year:

- 16,306 students self-identified as American Indian at New Mexico’s public postsecondary institutions, of which approximately 2,400 students attended a tribal institution in the state; and
- approximately 27 percent of current undergraduate students who attend four-year postsecondary institutions receive the Legislative Lottery Scholarship.

The analysis further states that, “if we were to assume a similar award rate at the tribal institutions, then it is possible that the impact to the Legislative Lottery Scholarship fund could

reach up to \$260,399 annually. However without additional data it is difficult to estimate the true cost precisely.”

The analysis by HED also cites the New Mexico Gaming Control Board, which monitors the 2001 and 2007 Amended Tribal-State Class III Gaming Compacts signed by 14 tribes.

- The compacting tribes pay revenue sharing and report Net Win on a quarterly basis. Net Win is the amount wagered on gaming machines, less the amount paid out in cash and non-cash prizes won on the gaming machines, less state and tribal regulatory fees.
- The remaining revenue is deposited into the General Fund. The total amount paid to the State Treasurer by the 14 tribes in FY 10 was \$63.8 million.
- HB 601 would require 1.0 percent, or \$638,000, of these revenues to be deposited into the Lottery Tuition Fund.

Substantive Issues:

Currently, there are four tribal colleges in New Mexico:

- Southwest Indian Polytechnic Institute (SIPI);
- Navajo Technical College;
- Institute of American Indian Arts (IAIA); and
- Diné College.

However, HED’s analysis notes that SIPI does not charge tuition and accepts only students who meet its tribal affiliation criteria, leaving in question “how to handle the Legislative Lottery Scholarship for those [students] who attend SIPI.”

Among other points, the analysis by HED states that:

- 34 percent of the total American Indian population resides on tribal lands;
- tribal colleges are located on or near tribal land, allowing students to attend college in a local environment;
- research demonstrates that American Indian students are more successful in college when their first postsecondary experience is in a tribal college largely because of the support of family, extended family, and a college student population that reflects their culture and identity;
- New Mexico’s tribal colleges have articulation agreements with all of the public postsecondary schools in the state, making all coursework transferable; and
- the tribal colleges receive state work-study, state incentive grants, and college affordability funding.

According to the bill analysis from HED, in order to track the effectiveness of lottery scholarships for students at tribal colleges, the tribal institutions will be required to report student enrollment information to the department each semester. Currently, the tribal institutions do not report student enrollment information to HED.

Finally, concerning a provision of the Constitution of the State of New Mexico known as the “anti-donation clause,” 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; therefore they could receive appropriations from the General Fund for capital projects.

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 GPA 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 Scholarship Application Time*

HB 92 *Lottery Scholarships for Tribal Colleges*

HB 359 *Lottery Scholarship Recipient Additions*

HB 562 *Lottery Scholarship Regulations*

*CS/SB 226 *Enact "Legislative Lottery Tuition Act"*

SB 292 *Limit Tuition Increase for Lottery Recipients*