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FISCAL IMPACT REPORT

ORIGINAL DATE 2/22/2017

SPONSOR Clahchischilliage LAST UPDATED _____ HJR 11

SHORT TITLE State Funds to Tribal College, CA SB _____

ANALYST Dulany

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total			\$50.0-\$100.0	\$50.0-100.0	Nonrecurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Higher Education Department (HED)
Office of Attorney General (OAG)
Indian Affairs Department (IAD)

SUMMARY

Synopsis of Bill

House Joint Resolution 11 amends the Constitution of New Mexico to authorize the Legislature to make appropriations to accredited tribal colleges. The joint resolution defines “tribal college” as a tribally, federally, or congressionally chartered postsecondary educational institution located in New Mexico that is accredited.

The amendment in HJR 11 is to be submitted to the people for their approval or rejection at the next general election or at any special election prior to that date.

FISCAL IMPLICATIONS

Section 1-16-13 NMSA 1978 requires the Secretary of State (SOS) to print the full text of each proposed constitutional amendment, in both Spanish and English, in an amount equal to 10 percent of the registered voters in the state. SOS is also constitutionally required to publish the full text of each proposed constitutional amendment once a week for four weeks preceding the election in newspapers in every county in the state. LFC staff estimate each constitutional amendment may cost from \$50 thousand to \$100 thousand in printing and advertising costs based on 2016 actual expenditures.

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Although tribal colleges do not currently receive instruction and general or research and public service project funding as state-supported higher education institutions do, tribal colleges do receive state support in the form of capital outlay and about \$233 thousand in compensation for tribal college dual credit, including \$50 thousand from the Indian education fund in FY17. The tribal college dual credit appropriations are made through HED.

SIGNIFICANT ISSUES

HED notes four colleges would become eligible for Legislative appropriations under HJR 11:

- Diné College;
- Institute of American Indian Arts;
- Navajo Technical University; and
- Southwestern Indian Polytechnic Institute.

New Mexico currently has 24 state-funded higher education institutions and three special schools. HED suggests adding eligibility for the four tribal colleges to receive state general fund support may result in reduced appropriations to the 27 institutions currently receiving funding.

HED cites data from the American Council on Education, which reports about 70 percent of funding for tribal colleges and universities comes from federal sources. Tuition and fees comprise about 10 percent of tribal college funding, and local grants and appropriations comprise the remaining funding, with only 1 to 2 percent of funding coming from state appropriations.

According to OAG, HJR 11 appears to avoid potential issues with the anti-donation clause in Article IX, Section 14 of the Constitution of New Mexico because the anti-donation clause specifically states that a donation may not be made “except as otherwise provided in this Constitution.”

PERFORMANCE IMPLICATIONS

New Mexico’s higher education institutions report performance data to the Department of Finance and Administration and LFC pursuant to the Accountability in Government Act (AGA). The AGA defines “agency” as a branch, department, institution, board, bureau, commission, district, or committee of the state. Although tribal colleges would receive state appropriations if HJR 11 is enacted, this definition does not appear to include the tribal colleges as a state agency.

ADMINISTRATIVE IMPLICATIONS

If appropriations are made to tribal colleges for instruction and general purposes, HED reports a comprehensive review will be required for incorporation of Classification of Instructional Program (CIP) course numbering codes and data. CIP codes and degree award data tied to those codes are used in determining recommended funding levels of postsecondary educational institutions in the Higher Education Funding Formula.

Pursuant to Article XII, Section 13 of the Constitution of New Mexico, the Legislature provides for the control and management of each of New Mexico’s public postsecondary educational institutions listed in the constitution by a board of regents. The regents are appointed by the Governor and confirmed by the New Mexico Senate. The Legislature provides for control and

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management of the state's seven independent community colleges by local election of community college governing boards established by the Community College Act. Statute does not provide for the state to play a role in appointment of leadership at the state's tribal colleges.

The Audit Act, which requires the thorough examination and audit of each state agency's financial affairs, defines a state agency as "any department, institution, board, bureau, court, commission, district or committee of the government of the state, including district courts, magistrate or metropolitan courts, district attorneys and charitable institutions for which appropriations are made by the legislature." If the Legislature begins making annual appropriations to tribal colleges, it is unclear whether such institutions would be subject to the provisions of the Audit Act.

POSSIBLE QUESTIONS

If HJR 11 is enacted, would tribal colleges receiving state appropriations be subject to the Accountability in Government Act and the Audit Act?

TD/al/jle