

SENATE FINANCE COMMITTEE SUBSTITUTE FOR
SENATE BILL 135

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

AN ACT

RELATING TO HIGHER EDUCATION; CREATING THE OPPORTUNITY
SCHOLARSHIP ACT; CREATING THE OPPORTUNITY SCHOLARSHIP FUND;
PROVIDING FOR LOTTERY TUITION SCHOLARSHIPS FOR CERTAIN
RETURNING STUDENTS; MAKING AN APPROPRIATION.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
through 6 of this act may be cited as the "Opportunity
Scholarship Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
Opportunity Scholarship Act:

A. "community college" means a branch community
college of a four-year state educational institution, a two-
year state educational institution or a community college or
technical and vocational institute established pursuant to

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1 Chapter 21, Article 13 or 16 NMSA 1978, respectively;

2 B. "department" means the higher education
3 department;

4 C. "eligible institution" means a public post-
5 secondary educational institution or a tribal college that has
6 a current and valid memorandum of understanding regarding
7 institution eligibility with the department, and which
8 memorandum of understanding is approved by the department;

9 D. "four-year opportunity scholarship" means a
10 scholarship that provides tuition assistance per program
11 semester for a qualified student enrolled in a four-year
12 program at an eligible institution;

13 E. "full time" means fifteen or more credit hours
14 each program semester of the regular academic year in four-year
15 programs and twelve or more credit hours each program semester
16 of the regular academic year in two-year programs;

17 F. "fund" means the opportunity scholarship fund;

18 G. "opportunity scholarship", without modification,
19 includes a two-year opportunity scholarship and a four-year
20 opportunity scholarship;

21 H. "program semesters" means those semesters for
22 which a qualified student may receive an opportunity
23 scholarship;

24 I. "public post-secondary educational institution"
25 means a state educational institution or a community college;

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1 J. "qualified student" means a recent graduate
2 learner or a returning student learner;

3 K. "recent graduate learner" means a full-time
4 student who does not have an associate's, bachelor's, master's
5 or doctoral degree and who graduated from a public or
6 accredited private New Mexico high school, who completed the
7 requirements of a home-based or non-public-school secondary
8 education program or who received a high school equivalency
9 credential while maintaining residency in New Mexico and who:

10 (1) either:

11 (a) within sixteen months of graduation
12 or receipt of a high school equivalency credential, was
13 accepted for entrance to and attended an eligible institution;
14 or

15 (b) within four months of graduation or
16 receipt of a high school equivalency credential, began service
17 in the United States armed forces and, within sixteen months of
18 completion of honorable service or medical discharge from the
19 service, attended an eligible institution; and

20 (2) successfully completed the first semester
21 at an eligible institution with a grade point average of 2.5 or
22 higher on a 4.0 scale during the first semester of full-time
23 enrollment and maintains a cumulative grade point average of
24 2.5 or higher on a 4.0 scale at an eligible institution;

25 L. "returning student learner" means a student

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1 eight years of age or older who has a high school diploma or
2 who has received a high school equivalency credential and who
3 does not have an associate's, bachelor's, master's or doctoral
4 degree, who, prior to receiving an opportunity scholarship, has
5 been a resident of New Mexico for the preceding twelve
6 consecutive months and who, beginning with the first semester
7 the student receives an opportunity scholarship, maintains a
8 cumulative grade point average of 2.0 or higher on a 4.0 scale
9 at an eligible institution;

10 M. "state educational institution" means an
11 institution of higher education enumerated in Article 12,
12 Section 11 of the constitution of New Mexico;

13 N. "tribal college" means a tribally, federally or
14 congressionally chartered eligible institution located in New
15 Mexico that is accredited by the higher learning commission;

16 O. "tuition and fees" means mandatory costs paid by
17 or for a qualified student to an eligible institution for
18 credit-bearing coursework, excluding differential tuition and
19 certain course-specific fees as established through rule by the
20 department, provided that the course-specific fees shall not
21 exceed two hundred fifty dollars (\$250) per course;

22 P. "two-year opportunity scholarship" means a
23 scholarship that provides tuition assistance per program
24 semester for a qualified student enrolled in a two-year program
25 at an eligible institution; and

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1 Q. "two-year program" means a program at an
2 eligible institution of two years' duration or that upon
3 completion results in an associate's degree or other
4 professional credential.

5 SECTION 3. [NEW MATERIAL] OPPORTUNITY SCHOLARSHIPS
6 AUTHORIZED--QUALIFIED STUDENTS.--

7 A. To the extent that money is available in the
8 fund, the boards of regents or governing bodies of eligible
9 institutions shall award opportunity scholarships in
10 department-approved amounts to qualified students attending
11 their respective eligible institutions.

12 B. A qualified student is eligible to receive an
13 opportunity scholarship; provided that the student maintains
14 residency in New Mexico and:

15 (1) for a recent graduate learner, for a
16 maximum of seven program semesters, achieves the earlier of:

17 (a) completion of a full-time course
18 load per program semester up to one hundred eighty credit
19 hours; or

20 (b) receipt of a bachelor's degree;

21 (2) for a returning student learner, for a
22 maximum of four years, achieves the earlier of:

23 (a) completion of six or more credit
24 hours per program semester up to ninety credit hours;

25 (b) receipt of two professional

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1 certificates; or

2 (c) receipt of an associate's degree;

3 and

4 (3) for a returning student learner who
5 received the learner's associate's degree after receiving an
6 opportunity scholarship and subsequently enrolled in a
7 four-year eligible institution to pursue a bachelor's degree in
8 one of five academic fields of high critical need for the state
9 as defined by the department, for a maximum of two years,
10 achieves the earlier of:

11 (a) completion of six or more credit
12 hours per program semester up to one hundred forty credit
13 hours; or

14 (b) receipt of a bachelor's degree.

15 C. No qualified student shall simultaneously
16 receive an opportunity scholarship as a recent graduate learner
17 and a returning student learner.

18 D. For students with disabilities who may require
19 accommodations, the department, in consultation with the
20 student and the office at the eligible institution that serves
21 students with disabilities, shall review both the definition of
22 "full time" and the maximum number of consecutive program
23 semesters of eligibility and adjust it as deemed reasonable and
24 appropriate, based on the student's disability needs. In no
25 case, however, shall "full time" mean fewer than six credit

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1 hours per semester, and in no case shall eligibility extend
 2 beyond fourteen consecutive program semesters. The definition
 3 of "qualified student" notwithstanding, a New Mexico resident
 4 who had to leave the state to receive an education pursuant to
 5 the federal Individuals with Disabilities Education Act shall
 6 be eligible for an opportunity scholarship if the student
 7 graduated from an accredited high school in another state and
 8 otherwise meets the qualifications for an opportunity
 9 scholarship pursuant to the definition of "qualified student"
 10 and this section.

11 SECTION 4. [NEW MATERIAL] OPPORTUNITY SCHOLARSHIP
 12 AMOUNT.--

13 A. Prior to June 1 of each year, based on the
 14 amount appropriated by the legislature from the fund for two-
 15 year opportunity scholarships and four-year opportunity
 16 scholarships and on the projected enrollment at all eligible
 17 institutions, the department shall:

18 (1) determine the total amount of money
 19 necessary to pay for opportunity scholarships for recent
 20 graduate learners at each eligible institution;

21 (2) determine the total amount of money
 22 necessary to pay for opportunity scholarships for returning
 23 student learners at each eligible institution; and

24 (3) notify each eligible institution of the
 25 determinations made pursuant to Paragraphs (1) and (2) of this

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1 subsection.

2 B. The department shall distribute an amount not to
3 exceed the remaining balance in the fund; and, to the extent
4 that money is available in the fund, the department shall
5 distribute an amount that shall pay the balance of the full
6 cost of tuition and fees for qualified students at each
7 eligible institution after all state non-loan-based student
8 financial aid, including institutional aid, has been paid to or
9 on behalf of the student.

10 SECTION 5. [NEW MATERIAL] OPPORTUNITY SCHOLARSHIP FUND
11 CREATED--PURPOSE.--

12 A. The "opportunity scholarship fund" is created in
13 the state treasury. The fund consists of all money
14 appropriated to the fund and any grants, gifts and bequests
15 made to the fund. The fund shall be administered by the
16 department. Earnings from investment of the fund shall accrue
17 to the credit of the fund. Any balance in the fund at the end
18 of any fiscal year shall be transferred to the lottery tuition
19 fund.

20 B. Money in the fund is subject to appropriation by
21 the legislature to the department for distribution to eligible
22 institutions to provide tuition and fee assistance for
23 qualified students as provided for in the Opportunity
24 Scholarship Act.

25 SECTION 6. [NEW MATERIAL] DEPARTMENT RULEMAKING AND

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1 REPORTING.--

2 A. The department shall promulgate rules setting
3 forth explicit criteria in accordance with the Opportunity
4 Scholarship Act for:

5 (1) student qualification and continuing
6 eligibility;

7 (2) calculating the total amount of money
8 necessary to pay for opportunity scholarships at each eligible
9 institution pursuant to Section 4 of the Opportunity
10 Scholarship Act and guidelines for the administration of the
11 opportunity scholarship program; and

12 (3) requirements for the memoranda of
13 understanding regarding institution eligibility to participate
14 in the opportunity scholarship program.

15 B. The department shall report by November 1 of
16 each year to the legislative finance committee and the
17 department of finance and administration:

18 (1) on the status of the fund;

19 (2) starting November 2023, on the number of
20 qualified students who received opportunity scholarships,
21 categorized by age, socioeconomic status, gender identity,
22 sexual orientation, race and ethnicity; and

23 (3) on the opportunity scholarship program
24 participation data aggregated for each eligible institution to
25 show the:

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1 (a) number of qualified students who
2 received opportunity scholarships in the prior academic year;

3 (b) total number of students enrolled in
4 eligible institutions in the prior academic year;

5 (c) number of qualified students who
6 graduated with a degree or professional certificate and, for
7 each qualified student, the number of consecutive semesters and
8 nonconsecutive semesters attended prior to graduation; and

9 (d) number of qualified students who
10 received an opportunity scholarship and completed a degree or
11 professional certificate in the prior academic year and who
12 subsequently enrolled at a four-year eligible institution.

13 SECTION 7. A new section of the Legislative Lottery
14 Tuition Scholarship Act is enacted to read:

15 "[NEW MATERIAL] RETURNING LOTTERY STUDENT--REPORTING.--The
16 department shall report by November 1, 2021 and by each
17 following November 1 through 2024 to the legislative finance
18 committee and the department of finance and administration on
19 the number of returning lottery students."

20 SECTION 8. Section 21-21N-2 NMSA 1978 (being Laws 2014,
21 Chapter 80, Section 2, as amended) is amended to read:

22 "21-21N-2. DEFINITIONS.--As used in the Legislative
23 Lottery Tuition Scholarship Act:

24 A. "community college" means a branch community
25 college of a four-year state educational institution, a two-

1 year state educational institution or a community college or
2 technical and vocational institute established pursuant to
3 Chapter 21, Article 13 or 16 NMSA 1978, respectively;

4 B. "comprehensive institution" means eastern New
5 Mexico university, western New Mexico university, New Mexico
6 highlands university or northern New Mexico college;

7 C. "department" means the higher education
8 department;

9 D. "full time" means fifteen or more credit hours
10 each semester of the regular academic year in state educational
11 institutions and twelve or more credit hours each semester of
12 the regular academic year in community colleges or for legacy
13 students in any program semester;

14 E. "fund" means the lottery tuition fund;

15 F. "legacy student" means a full-time resident
16 student who has received for three or more program semesters by
17 the end of fiscal year 2014 the legislative lottery scholarship
18 awarded pursuant to the former provisions of Sections 21-1-4.3,
19 21-13-10 and 21-16-10.1 NMSA 1978 prior to the enactment of the
20 Legislative Lottery Tuition Scholarship Act;

21 G. "program semesters" means those semesters for
22 which a legacy, returning lottery student or qualified student
23 may receive a tuition scholarship and excludes the first
24 semester of attendance at a public post-secondary educational
25 institution;

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1 H. "public post-secondary educational institution"
2 means a four-year state educational institution or a community
3 college;

4 I. "qualified student" means a full-time student
5 who graduated from a public or accredited private New Mexico
6 high school, who completed the requirements of a home-based or
7 non-public-school secondary educational program or who received
8 a high school equivalency credential while maintaining
9 residency in New Mexico and who:

10 (1) either:

11 (a) within sixteen months of graduation
12 or receipt of a high school equivalency credential, was
13 accepted for entrance to and attended a public post-secondary
14 educational institution; or

15 (b) within four months of graduation or
16 receipt of a high school equivalency credential, began service
17 in the United States armed forces and within sixteen months of
18 completion of honorable service or medical discharge from the
19 service, attended a public post-secondary educational
20 institution; and

21 (2) successfully completed the first semester
22 at a public post-secondary educational institution with a grade
23 point average of 2.5 or higher on a 4.0 scale during the first
24 semester of full-time enrollment;

25 J. "research institution" means the university of

1 New Mexico, New Mexico state university or New Mexico institute
2 of mining and technology;

3 K. "returning lottery student" means a full-time
4 student who:

5 (1) has received for two or more program
6 semesters of tuition scholarship by the end of fiscal year 2021
7 the legislative lottery scholarship awarded;

8 (2) is a resident of New Mexico;

9 (3) is within thirty-six credit hours of
10 receiving the student's first bachelor's degree from a public
11 post-secondary educational institution or tribal college in New
12 Mexico;

13 (4) has not received a tuition scholarship in
14 the preceding three years; and

15 (5) is enrolled at least six credit hours per
16 semester and maintains a grade point average of 2.5 or higher
17 on a 4.0 scale for each semester the student receives a tuition
18 scholarship;

19 ~~[K.]~~ L. "state educational institution" means an
20 institution of higher education enumerated in Article 12,
21 Section 11 of the constitution of New Mexico;

22 ~~[L.]~~ M. "tribal college" means a tribally,
23 federally or congressionally chartered post-secondary
24 educational institution located in New Mexico that is
25 accredited by the higher learning commission; and

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1 [M-] N. "tuition scholarship" means the scholarship
2 that provides tuition assistance per program semester for a
3 qualified student, a returning lottery student or legacy
4 student attending a public post-secondary educational
5 institution or tribal college."

6 **SECTION 9.** Section 21-21N-3 NMSA 1978 (being Laws 2014,
7 Chapter 80, Section 3, as amended by Laws 2019, Chapter 33,
8 Section 1 and by Laws 2019, Chapter 54, Section 2) is amended
9 to read:

10 "21-21N-3. TUITION SCHOLARSHIPS AUTHORIZED--QUALIFIED
11 STUDENTS.--

12 A. To the extent that funds are made available by
13 the legislature from the fund, the boards of regents or
14 governing bodies of public post-secondary educational
15 institutions and tribal colleges shall award tuition
16 scholarships in department-approved amounts to qualified
17 students, returning lottery students and legacy students
18 attending their respective public post-secondary educational
19 institutions.

20 B. Beginning in fiscal year 2015:

21 (1) a legacy student is eligible to receive a
22 tuition scholarship until the total number of program semesters
23 for which the legislative lottery scholarship is received
24 pursuant to the former provisions of Sections 21-1-4.3,
25 21-13-10 and 21-16-10.1 NMSA 1978 or the Legislative Lottery

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1 Tuition Scholarship Act reaches eight; provided that the legacy
 2 student maintains residency in New Mexico, maintains a grade
 3 point average of 2.5 or higher on a 4.0 scale and completes
 4 twelve or more credit hours per program semester; ~~and~~

5 (2) a qualified student who is not a legacy
 6 student is eligible to receive the tuition scholarship for a
 7 maximum of seven program semesters and in an amount determined
 8 pursuant to the provisions of Section 21-21N-4 NMSA 1978; and

9 (3) a returning lottery student who receives a
 10 tuition scholarship pursuant to this section shall receive the
 11 scholarship for the shorter of:

12 (a) two years; or

13 (b) the number of semesters necessary to
 14 receive the student's first bachelor's degree.

15 C. Except as otherwise provided in this section, a
 16 tuition scholarship may be awarded to a qualified student who:

17 (1) maintains residency in New Mexico;

18 (2) maintains a grade point average of 2.5 or
 19 higher on a 4.0 scale; and

20 (3) completes:

21 (a) for a student attending a four-year
 22 public post-secondary educational institution or a tribal
 23 college, fifteen or more credit hours per program semester; and

24 (b) for a student attending a two-year
 25 public post-secondary educational institution, twelve or more

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1 credit hours per program semester.

2 D. For students with disabilities who may require
3 accommodations, the department, in consultation with the
4 student and the office at the public post-secondary educational
5 institution or the tribal college that serves students with
6 disabilities, shall review both the definition of "full time"
7 and the maximum number of consecutive program semesters of
8 eligibility and adjust either or both as deemed reasonable and
9 appropriate, based on the student's disability needs. In no
10 case, however, shall "full time" mean fewer than six credit
11 hours per semester, and in no case shall eligibility extend
12 beyond fourteen consecutive program semesters. The definition
13 of "qualified student" notwithstanding, a New Mexico resident
14 who had to leave the state to receive an education pursuant to
15 the federal Individuals with Disabilities Education Act shall
16 be eligible for a tuition scholarship if the student graduated
17 from an accredited high school in another state and otherwise
18 meets the qualifications for a tuition scholarship pursuant to
19 the definition of "qualified student" and this section."

20 SECTION 10. APPROPRIATION.--Four million dollars
21 (\$4,000,000) is appropriated from the general fund to the
22 lottery tuition fund for expenditure in fiscal year 2022 and
23 subsequent fiscal years to support the education of returning
24 lottery scholarship students in fiscal years 2022 through 2025
25 pursuant to Section 9 of this act. Any unexpended or

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1 unencumbered balance remaining at the end of a fiscal year
2 shall not revert to the general fund.

3 SECTION 11. EFFECTIVE DATE.--The effective date of the
4 provisions of this act is July 1, 2021.

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