

State Notes

TOPICS OF LEGISLATIVE INTEREST

Winter 2012



North American Indian Tuition Waiver Program By Bill Bowerman, Associate Director

Introduction

Public Act 174 of 1976 provides for free tuition for Michigan resident North American Indians who attend Michigan public community colleges, public universities, and certain Federal tribally controlled community colleges. Since 1981, there have been sporadic efforts to eliminate the program. The tuition waiver program is again generating legislative attention. This article provides an overview of the program and funding issues. (The language of the Act is contained in the Appendix.)

Background

The Waiver of Tuition for North American Indians Act, as enacted in 1976, provided for free tuition for full-time students who were legal residents of Michigan for at least 18 months, and were certified by the Michigan Commission on Indian Affairs as one-half quantum blood Native American. The Act did not provide for State reimbursement to public universities and community colleges. In 1978, the Act was amended to require the state, upon application, to reimburse each institution for the total amount of tuition waived during the prior fiscal year. The 1978 amendments also reduced the quantum blood requirement to one-quarter from one-half, reduced the residency requirement from 18 months to 12 months, and extended waivers to part-time students. In 1993, an amendment extended the tuition waiver program to Federal tribally controlled community colleges. This change affects Bay Mills Community College and Saginaw Chippewa Tribal College.

Before fiscal year (FY) 1996-97, there was a separate line-item appropriation in the higher education appropriation bill to fund tuition waiver costs incurred by community colleges and universities. In FY 1996-97, the separate line item was eliminated and amounts were rolled into the base appropriations of individual universities and community colleges in order to continue funding costs of the program. The amounts rolled into base appropriations were calculated using a three-year average cost of waivers by institution. This change was made due to indications that then Governor Engler would veto funding for the North American Indian tuition waiver program. Since that time, there has been no specific earmarking of funds for Indian tuition waiver reimbursements, with the exception of pass-through appropriations in the higher education appropriation for the Saginaw Chippewa Tribal College and Bay Mills Community College.¹ While Public Act 174 of 1976, as amended, still requires the State to "reimburse each institution for the total amount of tuition waived during the prior fiscal year", that process has not been in effect since FY 1996-97 when the separate line-item appropriation for reimbursement was eliminated.

Funding Disparity

Reductions in State funding for higher education and community colleges, the level of participation in the tuition waiver program, and increases in tuition have contributed to a growing disparity between the actual cost of the program and the amounts built into the base appropriations of individual community colleges and universities. From FY 1996-97 through FY 2010-11, the total cost of waivers for public community colleges increased from \$617,391 to \$2,145,131 (247.5%). During the same time period, the total cost for public universities increased from \$2,026,581 to \$8,304,139 (309.8%). [Figure 1](#) and [Figure 2](#) illustrate the difference between State funding and actual waiver costs. The State funding

¹ Article III, Sec. 269 and Sec. 270 of Public Act 62 of 2011.



amounts are estimated based on the amount originally rolled into university and community college line items in FY 1996-97, adjusted for annual budget increases and decreases.

Figure 1

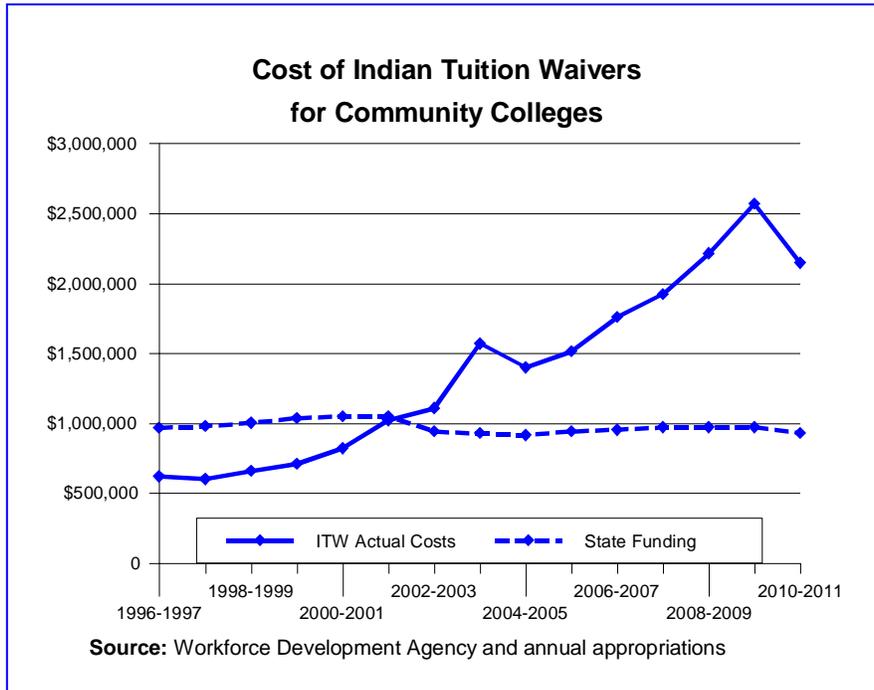
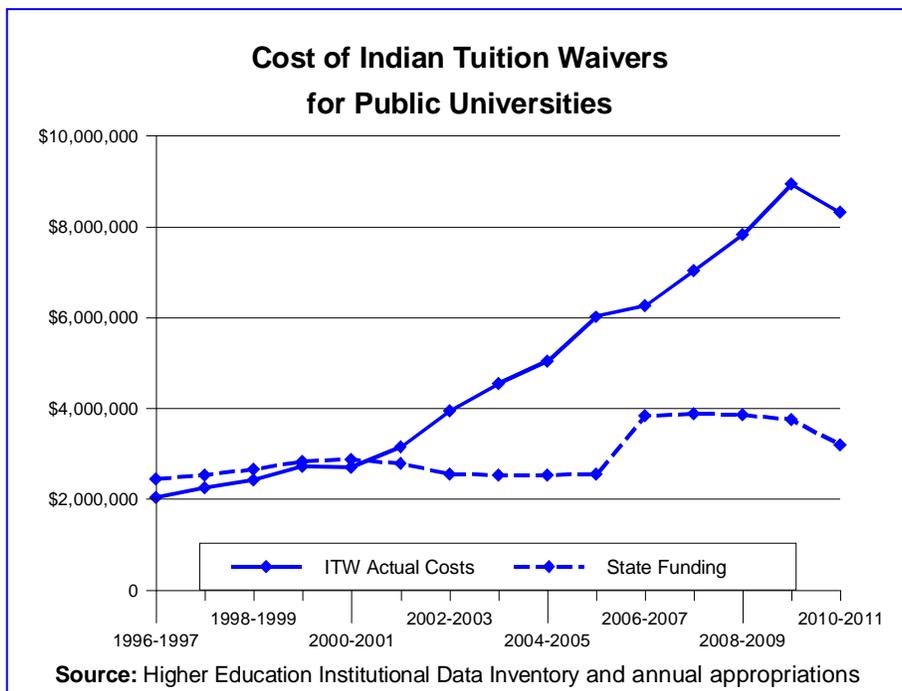


Figure 2





Educational institutions have absorbed the difference between the actual cost of tuition waivers and the amount included in base appropriations. The current shortfall is estimated at \$6.3 million. While previous appropriation bills, and the FY 2011-12 higher education appropriation bill, have included intent language that funds be allocated for unfunded North American Indian tuition waiver costs, no specific appropriation has been made to address the funding shortfall.²

Table 1 provides a summary of the FY 2011-12 shortfall in State funding for the Indian tuition waiver program, based on FY 2010-11 actual costs. The first column reflects amounts originally rolled into operating budgets in FY 1996-97. The second column reflects amounts remaining in the base appropriation based on overall adjustments (increases and decreases) to university and community college operating line items since FY 1996-97.³ The current amount necessary to reimburse community colleges and universities totals \$10.5 million, \$6.3 million more than the amounts remaining in the base budget of educational institutions.

Michigan Constitution, Article I, Section 26

On November 7, 2006, the electors approved an amendment to the Michigan Constitution that prohibits the State, public universities, community colleges, school districts, and other political subdivisions and governmental instrumentalities from discriminating against, or granting preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting. (The language of the amendment is contained in the Appendix to this article.) There is an argument that the North American Indian tuition waiver program is considered to be the fulfillment of a treaty agreement enforceable under Federal law, and therefore excluded under the provisions of Article I, Section 26 (i.e., the preference is based not upon an individual's race or national origin, but instead upon affiliation with quasi-sovereign tribes and agreements with governmental agencies). Based on this interpretation, beginning on July 15, 2010, the Michigan Department of Civil Rights has granted waivers only to individuals who are enrolled members of Federally recognized tribal associations and are not less than one-quarter quantum blood Indian.⁴ This change has resulted in a reduction of waivers. The cost of waivers approved in FY 2009-10 totaled \$11.5 million. In FY 2010-11, the cost was \$10.4 million. It is relevant that in 2007 the Michigan Attorney General was asked whether Public Act 174 of 1976 was constitutional, specifically in relation to Article I, Section 26. The Attorney General advised that in a situation in which legal questions involve potentially disputed factual issues, resolution by the judicial branch is the appropriate course.⁵

² Article III, Section 268 of Public Act 62 of 2011.

³ The only specific adjustment related to waiver costs for FY 1996-97 was a \$1.4 million increase to universities in FY 2007-08.

⁴ The Michigan Commission on Indian Affairs was abolished by Executive Reorganization Order No. 1991-20. Its powers and duties were transferred to the Director of the Department of Civil Rights.

⁵ July 9, 2007 letter from Attorney General Mike Cox to State Representative Michael Sak.

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Table 1

NORTH AMERICAN INDIAN TUITION WAIVER (ITW) PROGRAM				
FY 2011-12 Appropriations Compared to FY 2010-11 Actual Costs¹⁾				
Community Colleges	Amount Included in FY 1996-97	Adjusted ITW Funding in Base	FY 2010-11 Actual Cost	Difference
Alpena.....	\$9,800	\$9,712	\$20,608	\$10,896
Bay de Noc	69,000	68,336	139,550	71,214
Delta	41,400	41,237	33,767	(7,470)
Glen Oaks	3,100	3,090	1,459	(1,631)
Gogebic.....	14,100	13,974	43,665	29,691
Grand Rapids.....	73,000	72,486	266,941	194,455
Henry Ford.....	73,900	73,044	78,870	5,826
Jackson.....	16,700	16,572	46,773	30,201
Kalamazoo Valley	33,600	33,464	49,397	15,933
Kellogg.....	13,400	13,290	27,153	13,863
Kirtland.....	9,100	9,105	18,904	9,799
Lake Michigan.....	8,000	7,940	39,527	31,587
Lansing	66,600	66,069	175,891	109,822
Macomb.....	73,300	72,655	31,514	(41,141)
Mid Michigan.....	10,900	10,903	123,006	112,103
Monroe.....	1,900	1,897	4,408	2,511
Montcalm	1,400	1,401	5,623	4,222
Mott.....	50,600	50,197	101,115	50,918
Muskegon	31,000	30,753	85,999	55,246
North Central.....	40,300	40,183	181,284	141,101
Northwestern.....	110,500	109,405	342,504	233,099
Oakland.....	54,300	53,935	65,884	11,949
St. Clair	26,400	26,176	32,496	6,320
Schoolcraft.....	29,300	29,294	34,046	4,752
Southwestern.....	12,900	12,743	63,005	50,262
Washtenaw	30,500	30,466	55,050	24,584
Wayne County	24,900	24,745	32,042	7,297
West Shore	6,600	6,568	44,650	38,082
Subtotal.....	\$936,500	\$929,641	\$2,145,131	\$1,215,490
Universities				
Central	\$144,117	\$250,122	\$873,437	\$623,315
Eastern.....	103,478	141,754	300,257	158,503
Ferris.....	156,380	173,697	662,710	489,013
Grand Valley.....	114,121	239,314	731,799	492,485
Lake Superior.....	276,146	389,631	748,262	358,631
Michigan State	313,968	431,727	941,475	509,748
Michigan Tech.....	58,509	92,816	312,372	219,556
Northern.....	264,054	336,867	691,851	354,984
Oakland.....	50,610	85,569	223,688	138,119
Saginaw Valley	37,266	55,994	107,792	51,798
U of M-Ann Arbor	432,567	489,969	1,341,835	851,866
U of M-Dearborn	58,541	68,738	179,354	110,616
U of M-Flint	54,531	64,688	272,798	208,110
Wayne State	169,537	225,304	617,204	391,900
Western.....	111,851	145,669	299,305	153,636
Subtotal.....	\$2,345,676	\$3,191,859	\$8,304,139	\$5,112,280
TOTAL.....	\$3,282,176	\$4,121,500	\$10,449,270	\$6,327,770

¹⁾ Does not include pass-through appropriations for Bay Mills Community College (\$100,000) and Saginaw Chippewa Tribal College (\$29,700).

Sources: Senate Fiscal Agency and House Fiscal Agency Fiscal Year 2011-12 Higher Education Appropriations Report, Workforce Development Agency, Higher Education Institutional Data Inventory, and annual appropriation bills.

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Conclusion

Efforts to eliminate the North American Indian tuition waiver date back to the early 1980s. In FY 1996-97, the threat of a gubernatorial veto resulted in the elimination of the separate line item appropriation for the program. Because the costs of the program have been rolled into the base appropriation for each institution and budget reductions have taken place over the last decade, community colleges and universities have absorbed an increasing share of waiver costs. The 2006 amendment to the Michigan Constitution has generated additional questions regarding the waiver program. While the funding issue is before the Legislature, resolution of various legal issues will in all likelihood require a judicial determination.

Sources

Indian Tuition Waiver Program, Michigan Legislative Service Bureau Legislative Research Division Research Report Volume 20, Number 3, May 2000

Michigan Department of Civil Rights

Michigan Workforce Development Agency

Fiscal Year 2011-12 Higher Education Appropriations Report



Appendix

WAIVER OF TUITION FOR NORTH AMERICAN INDIANS Act 174 of 1976

An act to provide free tuition for state resident North American Indians in Michigan public community colleges, public universities, and certain federal tribally controlled community colleges; and to prescribe certain powers and duties of certain state departments, commissions, and agencies.

History: 1976, Act 174, Eff. Aug. 1, 1976; -- Am. 1993, Act 106, Imd. Eff. July 15, 1993.

The People of the State of Michigan enact:

390.1251 Waiver of tuition for North American Indians; qualifications; participation of federal tribally controlled community college; eligibility for reimbursement.

Sec. 1. (1) A Michigan public community college or public university or a federal tribally controlled community college described in subsection (2) shall waive tuition for any North American Indian who qualifies for admission as a full-time, part-time, or summer school student, and is a legal resident of the state for not less than 12 consecutive months.

(2) A federal tribally controlled community college may participate in the tuition waiver program under this act and be eligible for reimbursement under section 2a if it meets all of the following:

- (a) Is recognized under the tribally controlled community college assistance act of 1978, Public Law 95-471, 92 Stat. 1325.
- (b) Is determined by the department of education to meet the requirements for accreditation by a recognized regional accrediting body.

History: 1976, Act 174, Eff. Aug. 1, 1976; -- Am. 1978, Act 505, Imd. Eff. Dec. 13, 1978; -- Am. 1993, Act 106, Imd. Eff. July 15, 1993.

390.1252 "North American Indian" defined.

Sec. 2. For the purposes of this act, "North American Indian" means a person who is not less than ¼ quantum blood Indian as certified by the person's tribal association and verified by the Michigan commission on Indian Affairs.

History: 1976, Act 174, Eff. Aug. 1, 1976; -- Am. 1978, Act 505, Imd. Eff. Dec. 13, 1978.

390.1252a Reimbursement of tuition waived; report.

Sec. 2a. The Michigan commission on Indian Affairs shall annually, upon application therefore, reimburse each institution for the total amount of tuition waived during the prior fiscal year under section 1 of this act. The commission shall report to the legislature annually the number of American Indians for whom tuition has been waived at each institution and the total amounts to be paid under this act.

History: Add. 1978, Act 505, Imd. Eff. Dec. 13, 1978.

390.1253 Effective date.

Sec. 3. This act shall take effect on August 1, 1976.

History: 1976, Act 174, Eff. Aug. 1, 1976.



Appendix

Michigan Constitution, Article I, § 26.

Sec. 26. (1) The University of Michigan, Michigan State University, Wayne State University, and any other public college or university, community college, or school district shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.

(2) The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.

(3) For the purposes of this section "state" includes, but is not necessarily limited to, the state itself, any city, county, any public college, university, or community college, school district, or other political subdivision or governmental instrumentality of or within the State of Michigan not included in subsection 1.

(4) This section does not prohibit action that must be taken to establish or maintain eligibility for any federal program, if ineligibility would result in a loss of federal funds to the state.

(5) Nothing in this section shall be interpreted as prohibiting bona fide qualifications based on sex that are reasonably necessary to the normal operation of public employment, public education, or public contracting.

(6) The remedies available for violations of this section shall be the same, regardless of the injured party's race, sex, color, ethnicity, or national origin, as are otherwise available for violations of Michigan anti-discrimination law.

(7) This section shall be self-executing. If any part or parts of this section are found to be in conflict with the United States Constitution or federal law, the section shall be implemented to the maximum extent that the United States Constitution and federal law permit. Any provision held invalid shall be severable from the remaining portions of this section.

(8) This section applies only to action taken after the effective date of this section.

(9) This section does not invalidate any court order or consent decree that is in force as of the effective date of this section.

History: Add. Init., approved Nov. 7, 2006, Eff. Dec. 23, 2006.