

State Notes

TOPICS OF LEGISLATIVE INTEREST

Winter 2015



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

Introduction

Public Act 174 of 1976 provides for free tuition for North American Indians who are residents of Michigan and attend Michigan public community colleges, public universities, and certain Federal tribally controlled community colleges. (The language of the Act is contained in the Appendix to this article.) Since 1981, there have been sporadic efforts to eliminate the program, as well as efforts to fully reimburse institutions for costs incurred pursuant to Public Act 174. In the fiscal year (FY) 2014-15 higher education budget, an additional \$500,000 was appropriated to partially offset the difference between State appropriations and actual costs of the tuition waiver. This was the first appropriation of additional funds for the tuition waiver since FY 2007-08. This article provides an update to the winter 2012 *State Notes* article on the North American Indian Tuition Waiver Program. It gives an overview of the program and describes how the difference between appropriations and actual costs developed over time.

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 affected Bay Mills Community College and Saginaw Chippewa Tribal College.

Before 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 waivers. Since that time, until FY 2014-15, there was 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.

¹ Article III, Sec. 269 and Sec. 270 of Public Act 196 of 2014. This Act amended the State School Aid Act, which is where annual appropriations for higher education have been made since FY 2011-12.



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 over time to the 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 2013-14, the total cost of waivers for public community colleges increased from \$617,391 to \$2,065,276 (234.5%). During the same time period, the total cost for public universities increased from \$2,026,581 to \$8,512,217 (320.0%). Figure 1 and Figure 2 illustrate the difference between State funding and actual waiver costs for community colleges and universities, respectively. The State funding amounts are estimated based on the amounts originally rolled into university and community college operation line items in FY 1996-97, specific adjustments in FY 2007-08 and FY 2014-15, and the impact of across-the-board increases and decreases on amounts in base appropriations.²

Educational institutions have absorbed the difference between the amount included in base appropriations and the actual cost of the tuition waivers. While previous higher education budgets, and the FY 2014-15 higher education budget, have included language of intent that funds be allocated for unfunded North American Indian tuition waiver costs, community colleges and universities continue to absorb a large share of actual waiver costs.³

Table 1 provides a summary of the FY 2014-15 shortfall in State funding for the Indian Tuition Waiver Program, based on FY 2013-14 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 across-the-board adjustments to university and community college operations line items (increases and decreases) and specific appropriations for the Indian tuition waiver since FY 1996-97.⁴ The amount necessary to fund the entire cost of tuition waivers issued by community colleges and universities totals approximately \$10.6 million, almost \$5.8 million more than the estimated amounts remaining in the base budget of educational institutions.

The shortfall in State funding for the North American Indian tuition waiver costs has a varying impact on institutions, as shown in Table 2. The shortfall represented as a percentage of FY 2014-15 State appropriations for community colleges' operations equates to less than three-tenths of a percent for 16 colleges. However, the shortfall in State reimbursements for North American Indian tuition waivers equates to 5.4% of State funding for North Central, 3.4% for Mid Michigan, 2.3% for Northwestern, and 1.8% for West Shore. For nine universities, the shortfall represents less than five-tenths of a percent of their State appropriations for operations. However, the shortfall represents 2.5% of State appropriations for Lake Superior State University, 1.0% for Central and Grand Valley, and just under 1.0% for Northern, Ferris, and University of Michigan-Flint.

² Across-the-board increases and decreases to operations line items do not include funding adjustments based on performance measures.

³ Article III, Section 268 of Public Act 196 of 2012.

⁴ In FY 2007-08, university operation line items were increased by \$1.4 million in recognition of increasing costs of the tuition waivers. In FY 2014-15, a separate \$500,000 appropriation was included to partially offset the disparity between actual costs and appropriations.



Figure 1

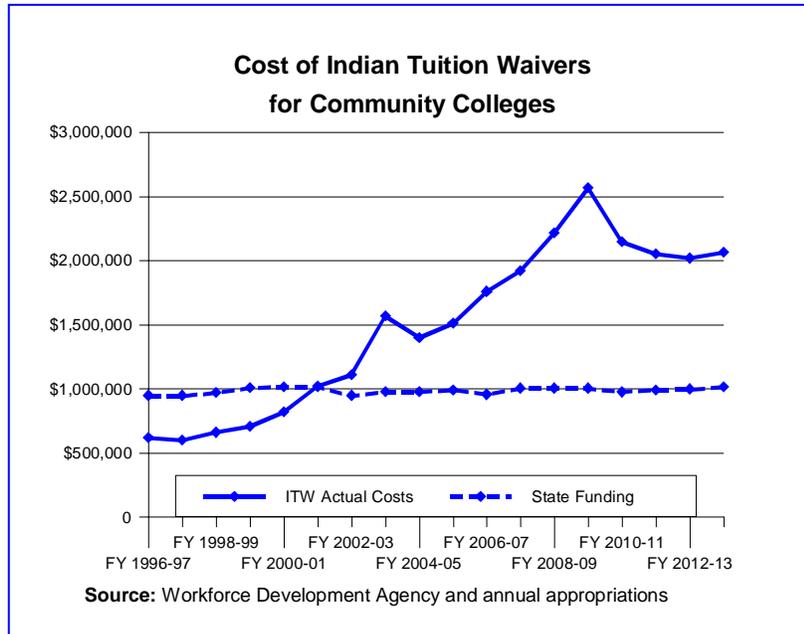
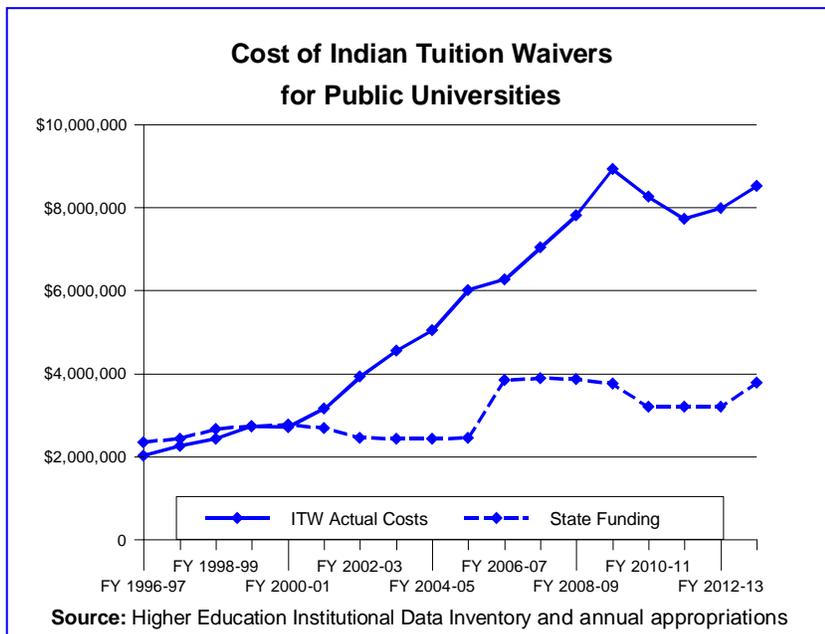


Figure 2



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.) There is a legal argument that the North American Indian Tuition Waiver fulfills the State's trust responsibility that is upheld in the Comstock Agreement⁵, and therefore is 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 his or her political status, or affiliation with his or her tribe, and in turn, the tribe's government-to-government relationship or sovereign status). 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 tribes and are not less than one-quarter Native American blood quantum.⁶ Since that time, 174 applications for tuition waivers have been denied because the tribe of the applicant was not federally recognized. 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.⁷

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, community colleges and universities have absorbed a substantial portion of the cost of the North American Indian tuition waiver. The 2006 amendment to the Michigan Constitution has generated questions regarding the waiver program. While resolution of the funding issue is the prerogative of the Legislature, resolution of legal issues surrounding the waiver program will in all likelihood, as stated by the Department of Attorney General, 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 2014-15 Higher Education Appropriations Report

⁵ The Comstock Agreement refers to a 1934 letter from then-Governor Comstock to the U.S.

Secretary of the Interior, in which the State accepted property known as the Mount Pleasant Indian School on the condition that "the State of Michigan will receive and care for in State institutions Indians resident within the state on entire equality with persons of other races...".

⁶ 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.

⁷ July 9, 2007, letter from Attorney General Mike Cox to State Representative Michael Sak. In January 2015 the Department of Attorney General reported that its position on this issue has not changed since the 2007 letter.

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Table 1

NORTH AMERICAN INDIAN TUITION WAIVER				
FY 2014-15 Appropriations Compared to FY 2013-14 Actual Costs¹⁾				
Community Colleges	Amount			
	Included in FY 1996-97	Adjusted ITW Funding in Base	FY 2013-14 Actual Cost	Difference
Alpena.....	\$9,800	\$10,606	\$26,727	\$16,121
Bay de Noc	69,000	74,677	124,347	49,670
Delta	41,400	44,806	21,587	(23,219)
Glen Oaks	3,100	3,355	0	(3,355)
Gogebic.....	14,100	15,260	45,536	30,276
Grand Rapids.....	73,000	79,006	286,744	207,738
Henry Ford.....	73,900	79,981	38,110	(41,871)
Jackson.....	16,700	18,074	86,381	68,307
Kalamazoo Valley	33,600	36,365	48,647	12,282
Kellogg.....	13,400	14,503	21,889	7,386
Kirtland.....	9,100	9,849	16,246	6,397
Lake Michigan.....	8,000	8,658	29,674	21,016
Lansing	66,600	72,080	137,446	65,366
Macomb.....	73,300	79,331	26,150	(53,181)
Mid Michigan.....	10,900	11,797	169,139	157,342
Monroe.....	1,900	2,056	5,686	3,630
Montcalm	1,400	1,515	13,592	12,077
Mott.....	50,600	54,763	42,930	(11,833)
Muskegon	31,000	33,551	95,684	62,133
North Central.....	40,300	43,616	214,602	170,986
Northwestern.....	110,500	119,592	326,532	206,940
Oakland.....	54,300	58,768	40,592	(18,176)
St. Clair	26,400	28,572	32,254	3,682
Schoolcraft.....	29,300	31,711	46,246	14,535
Southwestern	12,900	13,961	53,782	39,821
Washtenaw	30,500	33,010	32,359	(651)
Wayne County	24,900	26,949	30,863	3,914
West Shore	6,600	7,143	51,531	44,388
Subtotal.....	\$936,500	\$1,013,555	\$2,065,276	\$1,051,721
Universities				
Central	\$144,117	\$343,799	\$1,159,337	815,538
Eastern.....	103,478	152,835	218,473	65,638
Ferris.....	156,380	222,620	636,275	413,655
Grand Valley	114,121	310,372	915,137	604,765
Lake Superior.....	276,146	434,723	750,512	315,789
Michigan State	313,968	508,060	1,109,472	601,412
Michigan Tech.....	58,509	111,554	262,492	150,938
Northern	264,054	386,803	765,402	378,599
Oakland.....	50,610	107,793	293,848	186,055
Saginaw Valley	37,266	66,145	146,817	80,672
U of M-Ann Arbor	432,567	530,220	774,564	244,344
U of M-Dearborn	58,541	79,265	160,123	80,858
U of M-Flint	54,531	85,396	263,138	177,742
Wayne State	169,537	250,149	422,514	172,365
Western.....	111,851	196,265	634,113	437,848
Subtotal.....	\$2,345,676	\$3,786,000	\$8,512,217	\$4,726,217
TOTAL.....	\$3,282,176	\$4,799,555	\$10,577,493	\$5,777,938

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

Sources: Fiscal Year 2014-15 Higher Education Appropriations Report (Senate Fiscal Agency and House Fiscal Agency), Workforce Development Agency, Higher Education Institutional Data Inventory, and annual appropriation bills.



Table 2

NORTH AMERICAN INDIAN TUITION WAIVER			
Funding Shortfall as a Percent of State Appropriations for Operations			
Community Colleges	Tuition Waiver State Funding Shortfall	FY 2014-15 State Appropriations	Shortfall % of State Appropriation
Alpena	\$16,121	\$5,390,700	0.3%
Bay de Noc	49,670	5,419,500	0.9%
Delta	(23,219)	14,498,900	(0.2%)
Glen Oaks	(3,355)	2,516,100	(0.1%)
Gogebic	30,276	4,451,400	0.7%
Grand Rapids	207,738	17,947,500	1.2%
Henry Ford	(41,871)	21,623,800	(0.2%)
Jackson	68,307	12,087,300	0.6%
Kalamazoo Valley	12,282	12,503,100	0.1%
Kellogg	7,386	9,813,500	0.1%
Kirtland	6,397	3,167,700	0.2%
Lake Michigan	21,016	5,342,900	0.4%
Lansing	65,366	30,877,600	0.2%
Macomb	(53,181)	32,816,600	(0.2%)
Mid Michigan	157,342	4,682,000	3.4%
Monroe	3,630	4,492,900	0.1%
Montcalm	12,077	3,226,700	0.4%
Mott	(11,833)	15,686,100	(0.1%)
Muskegon	62,133	8,901,000	0.7%
North Central	170,986	3,172,400	5.4%
Northwestern	206,940	9,078,800	2.3%
Oakland	(18,176)	21,123,300	(0.1%)
St. Clair	3,682	7,061,600	0.1%
Schoolcraft	14,535	12,513,700	0.1%
Southwestern	39,821	6,576,400	0.6%
Washtenaw	(651)	13,077,300	0.0%
Wayne County	3,914	16,727,600	0.0%
West Shore	44,388	2,414,900	1.8%
Subtotal	\$1,051,721	\$307,191,300	0.3%
Universities			
Central	\$815,538	\$79,115,000	1.0%
Eastern	65,638	71,771,100	0.1%
Ferris	413,655	49,087,000	0.8%
Grand Valley	604,765	63,136,000	1.0%
Lake Superior	315,789	12,782,500	2.5%
Michigan State	601,412	264,429,100	0.2%
Michigan Tech	150,938	45,923,100	0.3%
Northern	378,599	44,277,200	0.9%
Oakland	186,055	48,364,100	0.4%
Saginaw Valley	80,672	27,610,200	0.3%
U of M-Ann Arbor	244,344	295,174,100	0.1%
U of M-Dearborn	80,858	23,689,300	0.3%
U of M-Flint	177,742	21,337,700	0.8%
Wayne State	172,365	190,519,800	0.1%
Western	437,848	102,742,000	0.4%
Subtotal	\$4,726,217	\$1,339,958,200	0.4%
TOTAL	\$5,777,938	\$1,647,149,500	0.4%

Sources: Fiscal Year 2014-15 Higher Education Appropriations Report (Senate Fiscal Agency and House Fiscal Agency), Workforce Development Agency, Higher Education Institutional Data Inventory, and annual appropriation bills.

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 $\frac{1}{4}$ 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 sub-section 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.