



STATE OF COLORADO

DEPARTMENT OF HIGHER EDUCATION

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Governor

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Testimony on SB09-295

Concerning accessibility at state-supported institutions of higher education.
Senate Education Committee, April 23, 2009

Mr. Chairman & Senators,

Thank you for the opportunity to offer written testimony concerning SB09-295 and for accommodating Mr. Karakoulakis in presenting it for me. I regret that a commitment in Washington tomorrow and a flight there this afternoon prevent me from attending in person.

I understand and fully respect the motivation and rationale for this legislation, as the state's colleges and universities faced difficult circumstances even before the current economic downturn and resulting budget actions made those circumstances even harder. One way to address those circumstances is to consider ways to permit the institutions to manage their affairs with as little intrusion from state authorities as possible consistent with – and I emphasize, consistent with – fundamental state policy objectives. The foremost of those objectives is making sure we take care of the primary customers of higher education – Colorado students – and as much as possible assure that all Colorado students who wish to pursue postsecondary education have access to it and can afford it.

Elements of earlier drafts of SB295 have been given considerable attention by the Governor and his staff. As the Committee is well aware, the Governor has made the health of higher education his top priority, as demonstrated by recent decisions to use the state's share of the American Recovery & Reinvestment Act's State Fiscal Stabilization Fund (ARRA:SFSF) money to maintain funding for higher education at FY08-09 levels for the next two years.

The department and representatives of the higher education governing boards have also had extensive discussions regarding various elements of SB295 over the last several weeks. Shifting drafts and timelines have prevented the kind of full consultation we'd all prefer to have preceded this hearing. I had the opportunity to confer with Senator Boyd about the Administration's concerns and positions earlier today.

Let me start with the relatively easy parts of the bill, which occur in reverse order in the bill.

Sections 16-23 concerning capital construction are, I believe, identical to the provisions of SB290, which originated with the Capital Development Committee. The department and OSPB have been working with the CDC and the institutions on this legislation for some time. As I understand it, the plan is to keep sections 16-23 of SB295 in synch with the provisions of SB290. Assuming those provisions continue to incorporate the concerns of the Administration, we endorse the additional flexibility for capital projects. The overriding concern is simply that projects which implicate state funding for later operation, maintenance or debt-service (Intercept Act) should be reviewed in advance by appropriate executive and legislative branch authorities.

Section 15 on the hiring of PERA retirees is fine.

Sections 12-14 deal with fiscal rules. As written, these sections are not acceptable. However, I believe the institutions have been discussing with the state Controller ways to address the most pressing problems that state fiscal rules have presented to higher education institutions. The department defers to the Controller to reach some accommodation on this aspect of the bill.

Section 10 deals with the treatment of foreign students in calculating whether an institution meets the requirement for resident students to comprise a minimum share of total enrollment. This piece of the bill is intended to address both important fiscal (foreign students are a source of revenue) and educational (foreign students enhance the educational and cultural environment) objectives. The bill relies on an institution's *admission* of all resident students who meet 'published admissions criteria' as a sufficient safeguard for resident students. Of course, institutions may and do admit many students who do not meet published criteria. In addition, depending on a variety of factors (most importantly how an institution 'packages' financial aid), admission often does not translate to enrollment. In order to assure that Colorado students are not squeezed out by foreign students because of an institution's limited capacity, it would be preferable to address the issue in terms of resident *enrollment* rather than admissions. We have prepared an amendment to that effect, assuring that Colorado students keep their relative share of over-all enrollment, even if foreign students are not counted in the non-resident calculation.

Sections 1-9 and 11 dealing with so-called tuition flexibility and administration of financial aid are, as drafted, highly problematic for the Governor. As noted at the start of my testimony, we respect the case being made for greater flexibility. However, a key piece of context for this policy question is the federal requirement that those ARRA:SFSF funds be used by higher education institutions to *mitigate tuition increases*. The Long Appropriation bill already authorizes all institutions to increase tuition next year by up to 9%. To adopt legislation now giving governing boards authority to increase tuition – subject only to a review in 2015 – would raise serious questions about compliance with federal law. And, of course, on compliance with that law hinges the state's eligibility for hundreds of millions of dollars. Beyond that worry, the Governor remains committed to preserving access to and the affordability of postsecondary education for all qualified Colorado students. The governing boards have been kept apprised of the Administration's concerns on these items and the rationale for them for some weeks.

In a request accompanying the Long Bill, and with the pressures on the institutions in mind, the JBC has asked the department to devise appropriate ways to measure "access" and "affordability" and report back to them. We need to have in place a reliable way to assure such access and affordability for Colorado students and their families before considering the elimination of legislative and executive branch authority over tuition-setting and financial aid. For the present, and to force needed attention to this issue, we have prepared an amendment directing the department and CCHE to develop and adopt measures that can assure access and affordability and, in the meantime, for the Commission immediately to use its existing authority to allow institutions greater flexibility in administering financial aid.

Thank you very much for your consideration. I leave Mr. Karakoulakis at your mercy to answer questions – possibly with the help of Mr. Gianneschi, who I believe is also present.