SB04-189

JBC STAFF FISCAL ANALYSIS
HOUSE APPROPRIATIONS COMMITTEE

CONCERNING INSTITUTIONS OF HIGHER EDUCATION, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

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		Date Prepared:	April 21, 2004

Summary of Amendments Made to the Bill After the 03/30/04 Legislative Council Staff Revised Fiscal Note was Prepared (Amended by the House Education Committee 04/14/04)

The House Education Committee amendment:

1. Clarifies that while local district junior colleges would not initially be part of the stipend program, they would still be eligible for direct grant funding, and they could be included in the stipend program in future years through legislation.
2. Restricts fees charged by the Colorado Student Loan Program for administration of the College Opportunity Fund to actual costs.
3. Strikes the expression of legislative intent that stipends increase at least at the rate of inflation and enrollment growth.
4. Replaces the requirement for a student signature with a more generic "authorization" to make stipend payments.
5. Increases the lifetime limit on the number of credit hours for which a student is eligible to receive stipend payments from 140 to 145 credit hours.
6. Allows higher education institutions to waive the lifetime-credit-hour limitation for up to 5 percent of the student population with priority for those seeking job retraining.
7. Clarifies the circumstances when an institution must repay the College Opportunity Fund for a student who withdraws.
8. Requires that the Colorado Commission on Higher Education (CCHE) inform students about the stipends beginning in the eighth grade.
9. Stipulates that increasing enrollment of underserved students shall be addressed in each performance contract.
10. Requires that measures of the progress of each institution toward meeting the goals set in the performance contracts be made available to the General Assembly and the public.
11. Expresses the General Assembly's intent that charges for basic skills courses not exceed those for general education courses.
12. Changes permissive authority to enter into fee-for-service contracts into a mandate.
13. Adds a severability clause indicating that if one component of the bill is found invalid, the other components still stand.

Most of the clarifications and limitations in the House Education Committee amendment are consistent with the assumptions used in the Legislative Council Staff Revised Fiscal Note dated March 30, 2004. The requirement that CCHE notify 8th graders about the stipend program and financial and academic preparation for college will have minimal costs that will be addressed by reallocating existing resources. Some of the strategies CCHE identified for keeping the costs down include outreach through the Colorado Student Loan Program's existing Colorado Mentor web resource, providing notification with the K-12 system's Student Accountability Reports and/or report cards, and/or using a consortium of private nonprofit organizations to assist with marketing.

Concerning the increase in the lifetime-credit-hour limit, the Legislative Council Staff Revised Fiscal Note dated March 30, 2004 assumed that any savings as a result of the 140 credit hour limit would just be factored into the General Assembly's decision on how much to appropriate for the stipend per student, and there would be no change in the total funds appropriated. Expanding the lifetime-credit-hour limit from 140 hours to 145, and allowing schools to annually waive the limit for up to five percent of the eligible student population, reduces the potential savings from the lifetime-credit-hour limit. In a Fall 2003 snapshot, 6,530 of the students enrolled had accumulated more than 145 credit hours (as opposed to 8,310 who had accumulated more than 140 credit hours). This represents 5.2 percent of the headcount for that semester. The Department was not able to identify how many of each student's credit hours were accumulated through courses that would not be subject to the lifetime-credit-hour limit, such as basic skills courses, or courses through the Post Secondary Enrollment Options Act. Assuming that each school waives the lifetime-credit-hour limit for 5 percent of the population, and taking into account that some of the credit hours earned by students may have been for courses not subject to the lifetime-credit-hour limit, it appears that the fiscal impact of the lifetime-credit-hour limit will be minimal.

JBC Staff Concurrence with Legislative Council Fiscal Note

	Concurs		**Does Not Concur**	XXX	**Updated**

Reason for the Update

There are a two items in the Legislative Council Staff that need to be updated based on new information available from the Department and a technical error. Legislative Council Staff has been consulted on these updates and concurs.

First, the bill requires that participating private institutions be included in CCHE's Student Unit Reporting Data System (SURDS), and that the private schools reimburse CCHE for any associated costs. The Department didn't provide any data with which to analyze these costs until recently. Most of the expenses will be born by the participating private schools as they reprogram their systems to provide information in the format necessary for SURDS. However, there will be a cost of approximately $6,900 to the Department, or about $2,300 per institution, for training, collection, processing, and report writing for 11 files. This cost will be reimbursed by the participating private institutions, which means the State will receive $6,900 in additional cash fund revenue for FY 2004-05. Since Legislative Council Staff is forecasting a TABOR surplus that year, the additional revenue will need to be refunded to the tax payers from the General Fund.

The second update to the Legislative Council Staff Revised Fiscal Note dated March 30, 2004, is a technical correction to Table 7 on page 10 of the Fiscal Note. The table should read as follows:

Table 7: Projected Tuition Revenues Allocated to Need-Based Financial Assistance (in thousands)

	Fiscal Year 2004-05	Fiscal Year 2005-06	Fiscal Year 2006-07	Fiscal Year 2007-08	Fiscal Year 2008-09	Total
Inflation Rate	1.1%	1.5%	2.1%	2.7%	2.7%	
Tuition Revenue Increases Above Inflation	$9,398	$11,027	$7,932	$8,144	$11,990	$48,491
20% Set-aside for Need-based Aid	$1,880	$2,205	$1,586	$1,629	$2,398	$9,698

The table assumes that tuition rates increase at the pace of inflation, but because of enrollment increases, revenues in excess of inflation are generated every year. In FY 2004-05 only the University of Colorado is expected to qualify for enterprise status and be subject to the requirement to set aside 20 percent of tuition revenue in excess of inflation for need-based financial aid. Beginning in FY 2005-06, it is assumed that all schools would be subject to the 20 percent requirement.

Amendments/Appropriation Status

The bill currently reduces the General Fund appropriation to the Regents of the University of Colorado by $4,500,000 and increases the cash funds appropriation by $4,500,000. The adjustments to appropriations for the University of Colorado take effect only if the University is designated as an enterprise during FY 2004-05. The reduction in General Fund for the University of Colorado saves enough to pay for the increase in the TABOR surplus if the University is designated as an enterprise.

Staff has prepared amendment **J.003** to appropriate $6,900 cash funds spending authority to the Department in FY 2004-05 for the cost of including the participating private schools in the Student Unit Reporting Data System. This cost is identified in the JBC Staff update to the Legislative Council Staff Revised Fiscal Note dated March 30, 2004 (see above).

The box on the front page of the Legislative Council Staff Revised Fiscal Note dated March 30, 2004 shows cash funds exempt expenditures of $270,130, and a need for 4.0 FTE. As noted later in the Legislative Council Staff Revised Fiscal Note dated March 30, 2004, no appropriations are necessary for these costs. Higher education institutions are appropriated lump-sum spending authority and typically (although not always) increases for specific expenses such as salary survey, utilities, or health, life and dental costs are not provided. The Department indicates that the $270,130 charge to state institutions by the Colorado Student Loan Program for administration of the stipend program would be treated as one more expense that the schools absorb within existing appropriations. The 4.0 FTE are for the Colorado Student Loan Program (CLSP). The CSLP operates as an enterprise under TABOR, is not appropriated in the Long Bill, and has statutory authority to hire as many FTE as are necessary to perform its duties.

Sponsor Amendments

Sponsor amendment L.049 removes the requirement that participating private institutions of higher education reimburse CCHE for the cost of including their students in the Student Unit Reporting Data System. As a result, CCHE will absorb the cost by reallocating existing resources. If the sponsor amendment is adopted, item #7 under the Questions and Concerns section is no longer relevant. However, there will be more of a reallocation of CCHE's existing resources (see item #6 in the Questions and Concerns section). **If sponsor amendment L.049 is adopted, then amendment J.003 should NOT be adopted.**

Questions and Concerns

1. The legislative declaration specifically states that funding for postsecondary education is not an entitlement, and that the General Assembly may decrease the value of the stipend, or place a limit on the number of stipends funded, based on the overall budgetary needs of the state. Furthermore, the amount of the stipend per credit hour is annually adjusted by the General Assembly. However, the bill requires that the Colorado Commission on Higher Education (CCHE) request annual funding to at least keep pace with inflation and enrollment growth. Also, the bill requires CCHE to inform 8th graders about the state's financial commitment to their education. Does the bill create an expectation for funding that is unrealistic, given the state's fiscal situation? The General Assembly has not appropriated General Fund for enrollment growth or inflation in the last three years and instead has made significant reductions in General Fund for higher education to balance the budget.

   The following table shows the annual increase in funding necessary for the stipend to keep pace with projected inflation and enrollment growth assuming an initial stipend amount of $2,400 per student FTE. The $2,400 is based on a scenario provided by the Department where the stipend is roughly equivalent to the lowest current General Fund support per FTE at any of the colleges. The actual amount of the stipend will be determined by the General Assembly, and the Department indicates that $2,400 per student is just one of many possible scenarios.

	FY 2005-06	FY 2006-07	FY 2007-08	FY 2008-09
Total Value of Stipends	$280,607,380	$288,234,289	$297,230,081	$307,392,080
Inflation for prior calendar year	1.5%	2.1%	2.7%	2.7%
Resident enrollment growth	1.2%	1.0%	0.7%	1.1%
Annual Increase in Stipends	$7,626,909	$8,995,792	$10,161,999	$11,772,194
Assistance to Private School Students	$1,770,000	$1,818,109	$1,874,852	$1,938,951
Annual Increase for Private Students	$48,109	$56,743	$64,099	$74,256
Combined Public & Private Increase	$7,675,017	$9,052,535	$10,226,099	$11,846,450

The initial total value of the stipends in FY 2005-06 was calculated using an estimate of resident undergraduate enrollment provided by the Department that excludes students who would be ineligible for stipends because they are enrolled through the post-secondary enrollment options act or they are in basic skills courses. Inflation and enrollment growth factors are based on the March Legislative Council Staff revenue forecast. The estimate of financial assistance to private school students uses the same assumptions as the Legislative Council Staff Revised Fiscal Note dated March 30, 2004, based on an initial stipend for students at state institutions of $2,400. In the absence of any forecast, it is assumed that enrollment at private institutions will grow at the same rate as enrollment at public institutions.

2. How would adjustments be made mid-fiscal year if the forecasted enrollment is too low? The stipend establishes an expectation about the amount to be paid per student before the number of eligible beneficiaries is known. Unlike Medicaid programs, there are no provisions in the bill that would allow an overexpenditure of the appropriation for the stipends if the enrollment is higher than forecast. Also unlike Medicaid programs, an unexpected increase in the total amount for stipends to account for a larger eligible population would not be exempt from the statutory six percent limit on General Fund appropriations.

If enrollment is higher than expected, and the General Assembly decreases the amount per stipend mid-fiscal year, rather than increasing the total funds appropriated, the Department would presumably need to notify students. Higher education institutions would need to reduce the total tuition charged, because Section 23-18-202 (4), C.R.S. does not allow the student's share of in-state tuition to increase. This same protection is not afforded to students receiving financial assistance for attending participating private schools.

3. How does the bill change the relationship between the Department and the higher education institutions such that funds provided outside of the stipends will be considered a fee-for-service contractual relationship that is not a state or local grant for purposes of determining whether the institutions qualify as enterprises under TABOR? Could the current General Fund subsidy of the higher education institutions be recast as a fee-for-service contract simply by appropriating the money to CCHE instead of the schools, without implementing the stipend system?

4. What is the intended role for the General Assembly, CCHE, and the governing boards with regard to setting tuition rates? Under current law, the total cash funds spending authority appropriated by the General Assembly, which includes but is not limited to spending authority for tuition, acts as a cap on the total cash fund revenues that schools can raise. The CCHE develops a distribution formula for the portion of cash funds spending authority attributable to tuition, and the cash funds appropriation to each governing board by the General Assembly must be consistent with this distribution formula. Also, CCHE establishes tuition and fee policies. The governing boards have statutory authority to set tuition rates. And, for the last several years the General Assembly has included a footnote in the Long Bill expressing legislative intent with regard to the maximum resident tuition rate increases at the schools. Thus, current law assigns overlapping and potentially conflicting responsibilities to the General Assembly, CCHE, and the governing boards with regard to setting tuition.

   The bill makes a few statements about tuition setting authority, but these do not appear to clarify the current overlapping responsibilities, and they may introduce more ambiguity about each entity's role in setting tuition rates.

   The bill requires that the governing boards operating under performance contracts report plans for tuition increases to CCHE and that CCHE forward these to the General Assembly. Also, the bill repeals CCHE's responsibility for developing a distribution formula for tuition cash funds. Finally, the bill indicates that the General Assembly retains the authority to approve tuition spending authority for the governing boards of the institutions.

5. The bill delegates authority to the Department to exempt higher education institutions from the procurement code and the central state motor vehicle fleet system. Depending on how many and which schools are granted exemptions, this may have an impact on the budgets of other state agencies outside of higher education because they would have to pick up a greater share of the base overhead costs. Should the General Assembly have final authority to

approve the exemptions?

6. CCHE has indicated that it's administrative costs to implement this bill can be absorbed largely by reallocating existing CCHE resources. For the information of the Appropriations Committee, the bullets below show the duties of CCHE that will change under this bill.

   New Responsibilities for CCHE Under S.B. 04-189:

   a. Include students at participating private institutions in the Student Unit Reporting Data System - CCHE will reimbursed by the community colleges for actual costs;
   b. Annually estimate the number of students eligible for stipends;
   c. Annually identify the institutions participating in the stipend program;
   d. Annually review and recommend adjustments as necessary to the amount of the stipend;
   e. Maintain records on the number of credit hours for which students receive stipends;
   f. Determine the number of credit hours remaining for which each student may receive a stipend under the lifetime-credit-hour limitation and make this information available to the higher education institutions and, upon request, the students;
   g. Grant waivers from the lifetime-credit-hour limitation;
   h. Annually notify 8th graders of the stipend program and financial and academic options for preparing to enter college;
   i. Submit annual reports from 2006 through 2009, and a final report in 2010 on the status of the stipend program;
   j. Negotiate performance contracts with each governing board and participating private institutions;
   k. Negotiate waivers from the procurement code and the central state motor vehicle fleet system;
   l. Annually report to the General Assembly on each school's operations under, and the fiscal impact of, the performance contracts;
   m. Make data collected on the progress of each school toward meeting the goals of the performance contract available to the General Assembly and, upon request, the public;
   n. Calculate the amount of unfunded enrollment growth;
   o. Annually negotiate fee-for-service contracts for rural education, basic skills courses, the Postsecondary Enrollment Options Act, the Fast Track program, satisfying reciprocal agreements, graduate education, career development and retraining, and specialized/professional education; and,
   p. Annually recommend to the General Assembly a funding level for the fee-for-service contracts.

Current Responsibilities for CCHE Eliminated Under S.B. 04-189:

a. CCHE need no longer review and approve the creation, modification or elimination of academic and vocational programs offered by the institutions;

b. Performance contracts may be in lieu of a school's compliance with Articles 1 and 13 of Title 23. Article 1 is broad and includes such CCHE responsibilities as, to name a few, approval of capital construction plans, establishing enrollment policies and admission standards, setting statewide affirmative action policies, establishing and enforcing student transfer agreements, developing the common course numbering system and common core of courses, and reviewing teacher preparation programs. Article 13 deals with the statewide expectations and goals for higher education, and the quality indicator system;

c. CCHE will not develop a distribution formula for General Fund and cash funds to the governing boards;

d. For schools designated as enterprises, CCHE won't review and approve capital construction projects funded solely from student fees, endowed gifts and bequests, or research building revolving funds, although CCHE will still review primarily cash projects that include a share of state funds; and

e. CCHE won't make recommendations for directly funding the governing boards, since it will make recommendations on stipends and fee-for-service contracts.

7. The March 2004 Legislative Council Staff forecast projects a TABOR surplus of $24.6 million in FY 2004-05. This sum must be refunded to the taxpayers out of the General Fund. Legislation that increases non-exempt revenue (such as cash funds) to the state will further increase the TABOR refund made out of the General Fund. Correspondingly, this will reduce the amount of General Fund available for programs. This bill is estimated to increase cash fund revenues by $6,900 in FY 2004-05, which in turn, will reduce the available General Fund by an equal amount.