SB04-189

JBC STAFF FISCAL ANALYSIS
SENATE APPROPRIATIONS COMMITTEE

CONCERNING INSTITUTIONS OF HIGHER EDUCATION.

Prime Sponsors:	Senator Anderson Representative King	JBC Analyst: Phone: Date Prepared:	Eric Kurtz 866-4952 March 25, 2004

Summary of Amendments Made to the Bill After the 03/24/04 Legislative Council Staff Revised Fiscal Note was Prepared

None.

JBC Staff Concurrence with Legislative Council Fiscal Note

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

Amendments/Appropriation Status

The bill does not currently contain, nor does it require, an appropriations clause. 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 in the table on the first page of the Revised Legislative Council Staff Fiscal Note dated March 24, 2004 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 it's duties. Therefore, no appropriation for FTE is necessary.

Sponsor Amendments

Sponsor amendment **L.018**:

- Strikes the definitions of cash funds and cash funds exempt. This does not change the identified fiscal impact.
- Clarifies that an institution shall not increase the student's share of in-state tuition to make up for an actual or effective reduction in the stipend *when the reduction occurs mid-fiscal year*. If the reduction occurs at the beginning of a fiscal year as part of the annual budget setting process, there could be an increase in the student's share of in-state tuition, which might or

might not be related to the decrease in the stipend amount. This clarification is consistent with the assumptions in the Legislative Council Staff Revised Fiscal Note dated 3/24/04 and does not change the identified fiscal impact.

- Changes the purpose of schools reporting planned tuition increases to the Colorado Commission on Higher Education (CCHE) from "for consideration by the Commission" to "for the Commission to forward to the General Assembly". This could be viewed as changing the role of CCHE with regard to setting tuition from the bill in its current form. See Question and Concerns #4 for a more detailed discussion.
- Clarifies that CCHE's responsibility to implement fee-for-service contracts for specific postsecondary educational services begins July 1, 2005. This clarification is consistent with the assumptions in the Legislative Council Staff Revised Fiscal Note dated 3/24/04 and does not change the identified fiscal impact.
- Strikes the current law minimum level of funding requirement for the state colleges. The Legislative Council Staff Revised Fiscal Note dated 3/24/04 did not address how the minimum level of funding requirement for the state colleges would work with a stipend system because it was unclear (see Questions and Concerns #5), and so this does not change the identified fiscal impact.
- Delays the effective date of the repeals of existing statutory language governing the financing of higher education until July 1, 2005. The Legislative Council Staff Revised Fiscal Note dated 3/24/04 assumed that although these statutes were repealed, current practice would continue until FY 2005-06, except where a new practice was specifically required by the bill, and so this does not change the identified fiscal impact.
- Makes miscellaneous technical corrections, which do not change the identified fiscal impact.

Amendment L.018 does not change the fiscal impact of the bill as delineated in the March 24, 2004 Revised Legislative Council Staff Fiscal Note.

<u>Questions and Concerns</u>

1. The Legislative Council Staff Revised Fiscal Note dated March 24, 2004 assumes that the University of Colorado system (CU) would be designated as an enterprise in FY 2004-05. Based on the effective date of the enterprise language in the bill, all schools would have the ability to declare enterprise status in FY 2004-05, but only the University of Colorado is currently projected to meet the income criteria for enterprise status where less than 10 percent of revenues come from state and local grants. If CU is designated as an enterprise, it would increase the TABOR surplus liability in FY 2004-05 by $4.7 million (see page 5 of the Legislative Council Staff Revised Fiscal Note dated March 24, 2004). This is because in FY 2004-05 tuition and other cash revenues for CU are projected to increase more slowly than the TABOR limit allows, assuming a 1.1 percent increase in resident and nonresident tuition

rates and a 7.1 percent TABOR growth limit with the population dividend. If CU is part of the state TABOR district, then General Fund can fill in the difference between the growth in CU's cash and the TABOR allowable growth. If CU is exempt as a result of enterprise status, then the General Fund can not take advantage of the slow growth in CU cash funds and the TABOR surplus will increase from current law.

If CU is designated as an enterprise in FY 2004-05, then $4.5 million in General Fund reductions will need to be made elsewhere in the budget and the amount necessary to meet the statutory 4.0% General Fund reserve requirement will be reduced by $0.2 million.

2. 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 indicates that it is the intent of the General Assembly that the amount of the stipend will increase annually by at least inflation and enrollment growth. Does the bill create an expectation for funding that is unrealistic? The General Assembly has not appropriated General Fund for enrollment growth or inflation in the last three years.

The bill requires that the Colorado Commission on Higher Education (CCHE) request annual funding to at least keep pace with inflation and enrollment growth. The following table shows the annual increase in funding necessary to satisfy the legislative intent 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. It also excludes students at the Area Vocational Schools, because comparable student FTE data was not available. 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 Fiscal Note, but with a rate of $1,200 per student, 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.

The table estimates the annual increases for higher education that would be near mandatory based on the expectations for funding created by the bill. The General Assembly would have more discretion over the amount of money appropriated for fee-for-service contracts. If the total amount for fee-for-service contracts is the difference between FY 2004-05 appropriations and the estimated total value of the stipends at an initial rate of $2,400 per student FTE, then the total value of the fee-for-service contracts would be $215,183,971.

3. 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, a mid-year 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.

4. 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?

5. 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. 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.

   In the bill, Section 23-18-205 (6) (c), C.R.S. requires that the governing boards operating under performance contracts report plans for tuition increases for consideration by CCHE. Does this mean that CCHE could modify or veto proposed tuition rate increases?

   Section 23-18-205 (10), C.R.S. indicates that the General Assembly retains the authority to approve tuition spending authority for the governing boards of the institutions. This implies an interpretation of the status quo that the General Assembly can set the tuition spending authority, but the current statutes refer to the General Assembly's control over total cash funds. While tuition is the largest source of cash funds, it is not the only component. Is this an expansion of the General Assembly's current statutory authority over tuition?

   Finally, the bill repeals CCHE's responsibility for developing a distribution formula for tuition cash funds.

6. The bill does not repeal the current statutory minimum level of funding requirement for the state colleges in Section 23-1-104 (6), C.R.S. How should the minimum level of funding requirement be reconciled with a stipend system where revenues for higher education institutions are not guaranteed but instead dependent on enrollment?

7. 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. Should the General Assembly have final authority to approve the exemptions?