SB04-189

Colorado Legislative Council Staff

STATE and STATUTORY PUBLIC ENTITY FISCAL IMPACT

No State General Fund Impact

Drafting Number:	LLS 04-0660	**Date:**	March 1, 2004
Prime Sponsor(s):	Sen. Anderson Rep. King	**Bill Status:**	Senate Education
		Fiscal Analyst:	Marc Carey (303 866-4102)

TITLE: CONCERNING INSTITUTIONS OF HIGHER EDUCATION.

Fiscal Impact Summary	FY 2004/2005	FY 2005/2006
State Revenues General Fund		
State Expenditures General Fund Cash Fund Exempt - State Institution Costs	$270,130	$163,007
FTE Position Change	4.0 FTE	6.0 FTE
Other State Impact: TABOR Revenue Impact.		
Effective Date: July 1, 2004.		
Appropriations Summary for FY 2004-05: None.		
Local Government Impact: None.		

Summary of Legislation

This bill establishes the Colorado Opportunity Fund Act of 2004, and changes the method for state funding of public higher education. Specifically, the bill establishes the College Opportunity Fund Program to be administered by the Colorado Student Loan Program (CSLP) in the Department of Higher Education. This program provides funds to students directly in the form of stipends instead of appropriating state General Fund support to institutions. In addition, the bill requires the governing board of each state institution of higher education to negotiate a performance contract with the department, specifying performance goals for the institution. The bill also authorizes the department to enter into fee-for service contracts with the board of each state institution regarding the provision of higher education services. Finally, the bill authorizes the boards to designate, by resolution, a state institution or group of state institutions as an enterprise for purposes of the Taxpayer's Bill of Rights (TABOR).

College Opportunity Fund Program. The bill creates the College Opportunity Fund as a trust fund to be administered by the CSLP. This fund will consist of stipend moneys for eligible Colorado undergraduate students that apply for the stipend and are admitted to and enroll in a state institution or participating private institution in Colorado. The bill defines an eligible student as an undergraduate student enrolled in a state or participating private institution that: (1) is classified as an in-state student for tuition purposes; (2) is a graduate of a Colorado high school; (3) demonstrates financial need through eligibility for a federal Pell Grant; and (4) meets other eligibility criteria that may be established by the Colorado Commission on Higher Education.

This bill defines a stipend as the amount of money per credit hour held in trust for and paid on behalf of an eligible student. A student may use the stipend for courses taken at a fixed rate per credit hour, set annually by the General Assembly. Students are prohibited from receiving a stipend for more than 140 credit hours, but may apply for a waiver of this limitation, based on extenuating circumstances specified in the bill. The stipend for any student may increase proportionately to the percent of unfunded enrollment growth appropriated to the boards. Institutions shall reimburse the fund proportionately for stipends received where students subsequently withdraw from a class.

Private institutions wishing to receive stipend payments on behalf of students are required to enter into a performance contract with the department. The bill specifies that a student who attends a private institution will only receive 50 percent of the stipend amount per credit hour. Participating private institutions are required to reimburse the department for administrative costs associated with including their students in the program.

The General Assembly, for each state fiscal year beginning on or after July 1, 2005, is required to make an annual appropriation to the CSLP, in trust for students, for deposit in the fund. Each state and private institution not receiving loan services through the CSLP is required to pay an implementation fee and an on-going disbursement fee, in amounts determined by the CSLP.

The General Assembly is also required to appropriate spending authority to each board for the cash funds exempt estimated to be received by the board as stipends. This spending authority will be calculated by multiplying the amount of applicable per-credit-hour stipend by the number of eligible undergraduate students estimated to be enrolled at the associated institution. After an eligible student has enrolled in a state or participating private institution, and upon receipt of the student's authorizing signature, the institution shall request a stipend payment from the fund on the student's behalf.

The commission, for each state fiscal year beginning on or after July 1, 2005, is required to annually estimate the number of eligible undergraduate student FTEs at each state and participating private institution, and report these estimates to the Governor and Joint Budget Committee (JBC) for inclusion in the annual general appropriations act. The commission, in consultation with the board, shall calculate the amount of enrollment growth. The commission shall maintain records of the number of credit hours for which eligible students receive stipends from the fund.

The commission, in consultation with the boards, is required to annually review the amount of stipend per credit hour. Following this review, the commission would recommend potential adjustments to the amount of stipend per credit hour to the Governor and JBC that reflect, at a minimum, inflation and estimated enrollment growth. Annually, from July 1, 2006 to July 1, 2009, the commission shall submit to the Senate and House Education Committees and the JBC annual reports on the program's status, including recommended statutory changes, as appropriate. On or before July 1, 2010, the commission shall submit a final report to these committees on the program's implementation.

Higher Education Performance Contracts. Beginning July 1, 2004, the governing board of each state institution and participating private institution shall negotiate a performance contract with the department, specifying goals for that institution. Goals are required to be measurable and tailored to the institution's mission. Measurement of progress toward goals may include:

- appropriate student enrollment, transfer, retention and graduation rates, and programs designed to help students meet their academic and/or vocational goals;
- student satisfaction and performance after graduation, measured by indicators such as employment or graduate program enrollment;
- comparative cost and productivity data in relation to peer institutions;
- quality assessment of the institution's academic and/vocational program by external reviewers, accreditation boards, employers, and performance on national exams;
- increasing financial support to student financial aid, capital construction projects; and increasing public and private research capabilities and competitiveness.

All performance contracts are required to be reviewed by the commission before they become effective. Each January beginning 2006, the department is required to report to the House and Senate Education Committees and the JBC on the financial effect of each performance contract on institutional funding, the overall statewide higher education system, and review each institution's operations under its performance contract. Performance contracts may be for up to ten years, and may be renewed at the department's discretion with agreement from the board. While operating under a performance contract, the board need not consult with the commission to create, modify or eliminate academic or vocational programs, so long as such actions are consistent with the institution's statutory mission. However, the commission may override such action if it finds it to be inconsistent with the institution's statutory mission. The board is also required to report plans for any tuition increases in the following academic year to the commission for its consideration. While the board is operating under a performance contract, the commission may request a General Fund appropriation for each board for the amount of any unfunded enrollment growth that exists.

Fee-for-Service Contracts. The bill requires the commission to ensure the provision of specific postsecondary educational services in Colorado, by authorizing the department to enter into fee-for-service contracts with the board of each state institution. Services required are those that:

- are provided in rural areas where the cost of such services is greater than the amount of tuition received;
- include basic skills courses such as preparatory courses for postsecondary education;
- are associated with the Postsecondary Enrollment Options Act;
- are associated with the High School Fast Track Program;
- are required of the commission to meet its obligation under reciprocal agreements;
- may increase economic development opportunities in Colorado;
- include graduate school services; and
- include specialized services and professional degrees such as dentistry, medicine, veterinary medicine, nursing, law, forestry and engineering.

Such contracts are required to be consistent with the institution's performance contract. The commission will make annual recommendations to the General Assembly and the Governor regarding the funding necessary for the department to implement these contracts. The General Assembly will appropriate to the commission General Fund moneys sufficient to carry out these contracts.

Enterprise Status. The bill authorizes the governing board to designate, by resolution, a state institution as an enterprise for purposes of TABOR, so long as the board retains authority to issue revenue bonds, and the institution receives less than ten percent of annual revenues in grants from Colorado state and local governments. Notice of any bonds issued by a board of an institution designated as an enterprise must be filed with the commission. Grants do not include fees received per fee-for-service contracts with the department or stipends paid on behalf of eligible undergraduate students. Such designation may not be rescinded so long as these conditions continue to be met. Resolutions must be submitted to the State Auditor to determine whether the required conditions have been met.

State Revenues

Potential Enterprise Status of Schools. This bill allows institutions to be designated as an enterprise for purposes of TABOR through a resolution by its governing board. To achieve enterprise requirements of TABOR, a program must : (1) engage in activities commonly carried on for profit outside the public sector, (2) have authority to issue revenue bonds, (3) receive less than 10 percent of annual revenue from state and local governments, and (4) be accounted for separately under financial records. Higher education institutions generally meet these criteria except for the portion of annual revenues from state and local governments. The bill will allow institutions to receive tuition funds through a stipend that are explicitly deemed by the bill not to be a grant of public funds to the institution. The following analysis assumes all institutions will be designated as an enterprise.

Designating such institutions as enterprises, and thus exempting their revenues from the TABOR limit affects the size of the TABOR surplus, and in turn, the amount of revenues the state refunds to taxpayers the following fiscal year. TABOR limits the growth of aggregate state revenue without limiting the growth of any individual revenue source. To the extent that an institution's revenue increases at a slower (faster) rate than the allowable TABOR growth rate, the institution's revenue contributes to a larger (smaller) TABOR surplus. If the institution is designated as an enterprise, its revenue is no longer included in the TABOR base, and the TABOR surplus will increase (decrease).

Table 1 shows the forecast for the allowable TABOR revenue growth rate and the total revenue subject to TABOR for the Department of Higher Education. Department revenue subject to TABOR is forecast to increase at a faster rate than the allowable TABOR growth rate over most of the forecast period. Thus, granting enterprise status to all institutions of higher education will reduce the size of the TABOR surplus.

Table 1: TABOR Allowable Growth Rate and Expected Growth in Higher Education Revenue* (Millions of Dollars)

	FY 2003/04	FY 2004/05	FY 2005/06	FY 2006/07
TABOR Allowable Rate	3.5%	4.3%	4.7%	4.8%
Higher Education Revenue Subject to TABOR*:				
Revenue Subject to TABOR**	$808.4	$846.6	$886.9	$928.6
General Fund	3.9%	4.7%	4.8%	4.7%

* *Based on the Legislative Council's December 2003 Forecast.*

** *Includes tuition revenue plus non-tuition revenue less scholarship allowances.*

Table 2 shows the projected change in the TABOR surplus with and without the effect of designating all institutions of higher education as enterprises. Currently, the TABOR Surplus is projected to total $1.5 billion over these four years. If all institutions are designated as enterprises, the TABOR surplus is projected to decrease by a total of $22.6 million over the forecast period. This would reduce the projected total TABOR surplus accordingly.

Table 2: The Impact on the TABOR Surplus, FY 2005-06 to FY 2008-09*
(Millions of Dollars)

	FY 2005/06	FY 2006/07	FY 2007/08	FY 2008/09	Total
Surplus Total Under Current Law	$347.4	$450.6	$332.6	$354.4	$1,515.1
Plus					
Change due to Higher Education Enterprise Status	(2.7)	(6.2)	(7.1)	(6.6)	(22.6)
Equals:					
Surplus Total after Enterprise Designation	344.7	444.4	325.5	347.9	1,492.5

**Based on the Legislative Council's December 2003 Forecast.*

Table 3 shows the change in General Fund spending through FY 2008-09 that would result from designating all public institutions of higher education as enterprises. Money available for General Fund appropriations would increase by a total of $11.4 million. Spending on highways would increase by $3.4 million in FY 2006-07 and by $2.8 million in FY 2008-09. Spending on capital construction would increase $1.4 million in FY 2008-09.

Table 3: Change in General Fund Spending, FY 2005-06 to FY 2008-09
(Millions of Dollars)

	FY 2005/06	FY 2006/07	FY 2007/08	FY 2008/09	Total
Available for General Fund Appropriations	$2.6	$2.8	$2.9	$3.1	$11.4
Senate Bill 97-1 Diversion	0.0	3.4	0.0	0.0	3.4
Highway Users Trust Fund	0.0	0.0	0.0	2.8	2.8
Total to Highways	0.0	3.4	0.0	2.8	6.2
Capital Construction Fund	0.0	0.0	0.0	1.4	1.4
Excess Gen. Fund Reserve*	0.0	0.0	4.2*	3.4	7.6

** Moneys in the excess General Fund reserve are allocated to highways and capital construction in the following fiscal year.*

Tuition Changes. As a result of this bill, institutions that are designated as enterprises may seek to raise tuition levels. Over the last five years, annual tuition increases for four-year institutions and two-year institutions have ranged between 3.1 percent and 8.4 percent and between 2.4 percent and 5.0 percent respectively. During this period, tuition revenue increases were subject to TABOR limitations. While it is currently not possible to know what future potential increases may be, it is reasonable to assume that these historic increases represent a lower bound for future increases by institutions newly designated as enterprises.

State Expenditures

CSLP Administration Costs. The CSLP would incur costs associated with administering the Colorado Opportunity Fund. Cost estimates are based on the assumption that the program would work for an individual student as follows:

- the student applies for vouchers on the CSLP Voucher Web System;
- the student selects an institution, and enrolls during the enrollment period;
- the institution is notified by email regarding the student's application for vouchers;
- the institution determines the student's eligibility, and sends a certification file to CSLP from the voucher web system;
- the CSLP receives the certification file and updates both the student's account on the voucher web system and the CSLP Escrow Disbursement System;
- the CSLP either invoices the State Treasury or verifies funds are in the CSLP account;
- appropriate funds are sent to institution along with a roster file;
- the institution determines any funds that need to be returned, and submits refund information through the voucher web system;
- the CSLP receives the file and updates the student's account on the voucher web system and the escrow disbursement system; and
- the institution receives the adjustment of credit hours and the maximum remaining that the student is eligible to receive.

Table 4 summarizes these additional expenses, based upon the following additional assumptions:

- CSLP would begin developing the system on July 1, 2004;
- CSLP would require a new server and a replacement server in the third year;
- CSLP would contract a significant portion of its IT costs. Contract staff would include one manager, six web developers, one mainframe developer (six months only), three testers (three months only, and three systems analysts (three months only). Only the manager, one web developer and one tester would remain on an on-going basis, and these employees would receive PERA/Medicare benefits;
- operations staff would include a manager starting July 1, 2004, and two staff assistants starting January 1, 2005. These would not be contract positions, and would receive PERA/Medicare benefits;
- an annual audit of the system would be required;
- CSLP would require a 10 percent contingency, as this is a completely untried program; and
- indirect costs are estimated to be an additional 10 percent.

Table 4: Estimated CSLP Program Administration Costs (Assumes Quarterly Disbursements)		
	FY 2004/05	**FY 2005/06**
IT Costs		
Personnel	2.0 FTE - $161,500	3.0 FTE - $161,500
PERA/Medicare	18,734	18,734
Subtotal	180,234	180,234
Contract Personnel	215,000	0
Supplies	69,356	15,075
Total IT	$464,590	$195,309
Operating Expenses		
Operating Personnel	2.0 FTE -86,000	3.0 FTE - 112,000
PERA/Medicare	9,976	12,992
Subtotal	95,976	124,992
Supplies	15,906	14,859
Total Operating	$111,882	$139,851
Accounting Expenses		
Audit Costs	$30,000	$30,000
Total Accounting	$30,000	$30,000
Subtotal	$606,472	$365,160
Other Expenses		
Contingency (10 percent)	$60,647	$36,516
Indirect Costs (10 percent)	60,647	36,516
Total Other	$121,294	$73,032
Total Expenses	**4.0 FTE - $727,766**	**6.0 FTE - $438,192**

* *These expenses assume that disbursements would be made on a quarterly basis. If disbursements are made on a monthly basis, costs would increase.*

Institutional Direct Costs. The total administrative costs incurred will be allocated between the CSLP and the six institutions that are not currently using CSLP loan services. These institutions will cover their portion of the costs through the one-time implementation fees and on-going disbursement fees as specified in the bill. Currently, CSLP estimates that they will cover 60 percent of these costs, or approximately $436,659 in FY 2004-05 and $262,915 in FY 2005-06.

The remaining 40 percent, or approximately $291,107 in FY 2004-05 and $175,277 in FY 2005-06, will be allocated among the six institutions according to the number of credit hours for enrolled students. Because credit hour figures were not available for the private institutions, this fiscal note uses the number of enrolled undergraduate students from Colorado to estimate this allocation. Table 5 summarizes the estimated administrative costs to be paid by each of these six institutions in FY 2004-05 and FY 2005-06.

Table 5: Estimated Share of CSLP Expenses Covered by Non-Customer Institutions			
	Share*	**FY 2004/05**	**FY 2005/06**
University of Colorado - Boulder	41 %	$119,354	$71,863
University of Colorado - Health Sciences Center	1 %	2,911	1,753
Colorado State University	43 %	125,176	75,369
Colorado State University - Pueblo	8 %	23,289	14,022
Subtotal-State Institutions	93 %	270,730	163,007
Colorado College	2 %	5,822	3,506
University of Denver	5 %	14,555	8,764
Subtotal-Participating Private Institutions	7 %	20,377	12,270
Total Expenses	**100 %**	**291,107**	**175,277**

** Enrollment estimates for University of Colorado and Colorado State University are FY 2002-03 resident undergraduate FTE from CCHE. Estimates for Colorado College are from the school's web site. Estimates for the University of Denver are Fall 2004 from the Provost's Office.*

Institutional Indirect Costs. Implementation costs to institutions may involve modifications to multiple computer systems such as integrated student information systems, financial aid and record systems, and internet portals that allow student access to registration and billing information. Data coordination with the CSLP may require additional programming. In particular, the bill requires participating private institutions to reimburse the department for the expenses associated with including that institution in the Student Unit Reporting Data System.

There will be ongoing costs associated with managing these integrated systems, as well as potential costs for additional staff in the financial aid offices to answer questions from students and parents about the new funding mechanism. To date, institutions have not provided estimates of these costs.

Direct and indirect costs incurred by state institutions will not be covered by an appropriation of General Fund moneys.

Institutional Distributional Impacts. The current General Fund subsidy per student varies by school, therefore, a flat stipend will change distribution of state funds per student among institutions. Assuming the stipend is equal to the current average per student subsidy across institutions, schools with relatively low current subsidy levels (Metro State, Fort Lewis, Community Colleges) will benefit, while schools with relatively high current subsidy levels (Adams State, Western State, Colorado School of Mines) will experience decreased state funding. Both CU and CSU would also see slight decreases in state funding.

CCHE Administration Costs. The bill makes several requirements of the commission regarding the administration of the program and negotiating performance and fee-for-service contracts with the boards of each state and participating private institution. Specifically, the commission is annually required to estimate the number of undergraduate FTEs at participating institutions, calculate enrollment growth, maintain a record of the number of credit hours eligible for stipends, review the current stipend amount and make recommendations regarding adjustments, report on the program's status to the General Assembly, and negotiate performance contracts and fee-for-service contracts with the governing boards. It is assumed that these requirements may be achieved through a reallocation of current personnel duties and resources. Thus, the commission's requirements in this bill can be absorbed within existing budgetary resources.

Enrollment at State Institutions. State institutions may see increases in enrollment as a result of this bill. From FY 2000-01 to FY 2002-03, annual enrollment increases at public institutions in Colorado have ranged between 0.6 percent and 6.4 percent. While it is currently not possible to know what future enrollment increases (if any) may be, it is reasonable to assume that these historic increases represent a lower bound. **(**The commission has not provided projections of future year enrollment growth under the provisions of this bill**.)** The state will be required to provide a stipend for every eligible undergraduate student. If a state budget shortfall occurs, options include a reduction in student stipends or a cap on enrollment.

Enrollment at Private Institutions. This bill would expand the number of students eligible to receive state tuition assistance, as resident students attending private institutions do not currently receive General Fund support, except for financial aid. Students currently attending private institutions that choose to participate may receive a stipend equal to 50 percent of the amount that students attending state institutions receive.

In FY 2002-03, 1,475 students from Colorado's three non-profit private institutions (Colorado College, Regis University and University of Denver) qualified for and received a federal Pell grant. Assuming that the stipend is equal to the FY 2003-04 estimated General Fund per resident FTE of $2,996, the General Fund impact to include these three non-profit private institutions is $2,209,550. This figure probably overestimates the impact, as not all of these students graduated from Colorado high schools.

State Appropriations

Generally, state institutions do not receive appropriations for expenses incurred by individual institutions. Therefore, this fiscal note implies that no General Fund appropriation is required in FY 2004-05 to implement this bill.

Departments Contacted

Higher Ed Treasury Legislative Council Staff Governor's Office