



## STATE OF COLORADO

Sally Symanski, CPA  
State Auditor

OFFICE OF THE STATE AUDITOR  
303.869.2800  
FAX 303.869.3060

Legislative Services Building  
200 East 14th Avenue  
Denver, Colorado 80203-2211

### Memorandum

TO: Members of the Legislative Audit Committee

FROM: Sally Symanski, CPA  
State Auditor

DATE: September 13, 2006

RE: Higher Education TABOR Enterprise Status

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Under Section 23-5-101.7, C.R.S, a higher education governing board may designate its respective institution(s) as an enterprise for purposes of Section 20 of Article X of the Colorado Constitution (Taxpayer's Bill of Rights or TABOR). The Office of the State Auditor and the Legislative Audit Committee are required to review whether such designations meet the requirements of a TABOR-exempt enterprise. In August 2004, the Legislative Audit Committee reviewed and approved the designation of the University of Colorado as an enterprise for Fiscal Year 2005. In 2005, the Committee reviewed and approved the designation of ten additional higher education institutions as TABOR-exempt enterprises for Fiscal Year 2006.

Final determination of enterprise status is made at the end of each fiscal year after final financial information is known. This memo provides the final enterprise status of the eleven institutions for Fiscal Year 2006 and their projected enterprise status for Fiscal Year 2007. It also provides information about a study currently being undertaken by the Department of Higher Education to identify alternative funding models that can be used for higher education institutions in the future.

On the basis of our review of Fiscal Year 2006 financial information, all eleven of the institutions that have been designated as TABOR-exempt enterprises qualified for enterprise status in that year. The discussion of our analysis begins on page 4.

#### **Background: Fee-For-Service Contract Purchases and College Opportunity Fund Stipends**

The General Assembly passed Senate Bill 04-189 during the 2004 Legislative Session which changed the process for funding postsecondary education. The Bill established the College Opportunity Fund (COF) as a trust fund to provide financial assistance to eligible undergraduate college students through stipend payments. To obtain the stipend, an eligible undergraduate student must apply for the stipend and be admitted to a state or private participating institution of higher education. Once this is accomplished, an institution requests the Colorado Student Loan Program (formerly College Access Network) to provide the stipend payment to the institution so the funds can be applied against the student's total in-state tuition cost.

Senate Bill 04-189 also directed the Colorado Commission on Higher Education (Commission) to acquire educational services from state institutions of higher education. On behalf of the Commission, the Department of Higher Education was authorized to enter into fee-for-service contracts with higher education governing boards to purchase such services. The Bill, as amended in subsequent years, authorized the purchase of the following services for Fiscal Year 2007:

- Educational services in rural areas or communities in which the cost of delivering the educational services is not sustained by the amount received in student tuition.
- Educational services required of the Commission to meet its obligations under reciprocal agreements (i.e., agreements for obtaining waivers of the nonresident differential in tuition rates for Colorado residents attending higher education institutions in other states in exchange for Colorado institutions waiving the nonresident differential in tuition rates for residents of the other states).
- Graduate school services.
- Educational services that may increase economic development opportunities in the State, including courses to assist students in career development and retraining.
- Specialized educational services and professional degrees including, but not limited to, the areas of dentistry, medicine, veterinary medicine, nursing, law, forestry, and engineering.

For Fiscal Year 2006, the General Assembly appropriated \$545,017,381 to the College Opportunity Fund for COF stipends and the acquisition of educational services. Participating private institutions (i.e., University of Denver and Regis University) were appropriated \$720,000 for COF stipends. Of the \$544,297,381 appropriated for state institutions, \$281,961,600 was designated for COF stipends and \$262,335,781 was for fee-for-service contracts. Eligible students attending public colleges and universities received \$80 per credit hour for qualified courses up to a maximum of \$2,400 a year for 30 credit hours.

For Fiscal Year 2007, the total amount appropriated to the College Opportunity Fund for state and private institutions increased about 6 percent to \$578,102,044. The appropriations for COF stipends for participating private institutions was \$774,000. Of the \$577,328,044 appropriated for state institutions, \$318,691,920 was for COF stipends and \$258,636,124 was for fee-for-service contracts. Eligible students attending public colleges and universities will receive \$86 per credit hour for qualified courses up to a maximum of \$2,580 a year for 30 credit hours.

The services purchased from higher education institutions and the appropriated amount of COF stipends for Fiscal Year 2007 are shown in the table on the following page.

**HIGHER EDUCATION ENTERPRISES  
FEE-FOR-SERVICE CONTRACT PURCHASES AND APPROPRIATED COF STIPENDS  
FISCAL YEAR 2007**

	GRADUATE EDUCATION	RECIPROCAL AGREEMENTS AND VESTIBULE LABS	ECONOMIC DEVELOPMENT AND PRESERVATION	CAREER DEVELOPMENT AND RETRAINING	HIGH COST SPECIALIZED EDUCATION (Note 1)	FEE FOR SERVICE TOTALS	COLLEGE OPPORTUNITY FUND (COF) STIPENDS	TOTAL
ADAMS STATE COLLEGE	\$3,548,346	\$67,080 (Note 2)	\$1,179,287	--	\$3,869,319	\$8,664,032	\$3,898,380	\$12,562,412
COLORADO COMMUNITY COLLEGE SYSTEM	--	\$2,430,360 (Note 3)	--	--	\$16,419,795	\$18,850,155	\$103,148,400	\$121,998,555
COLORADO SCHOOL OF MINES	(Note 4)	(Note 4)	(Note 4)	(Note 4)	(Note 4)	\$13,067,037	\$6,976,320	\$20,043,357
COLORADO STATE UNIVERSITY - FORT COLLINS	\$19,232,527	--	--	--	\$48,194,986	\$67,427,513	\$49,577,280	\$117,004,793
COLORADO STATE UNIVERSITY - PUEBLO	\$1,411,516	\$20,640 (Note 2)	--	\$2,463,596	\$2,463,648	\$6,359,400	(Note 5)	\$6,359,400
FORT LEWIS COLLEGE	--	\$216,720 (Note 2)	\$3,877,833	--	--	\$4,094,553	\$6,651,240	\$10,745,793
MESA STATE COLLEGE	\$601,000	--	--	\$1,474,416	\$6,970,440	\$9,045,856	\$11,586,780	\$20,632,636
METROPOLITAN STATE COLLEGE OF DENVER	--	--	--	--	\$4,163,555	\$4,163,555	\$37,002,360	\$41,165,915
UNIVERSITY OF COLORADO	(Note 4)	(Note 4)	(Note 4)	(Note 4)	(Note 4)	\$105,515,552	\$72,879,840	\$178,395,392
UNIVERSITY OF NORTHERN COLORADO	\$12,860,000	--	--	--	\$2,010,911	\$14,870,911	\$23,078,100	\$37,949,011
WESTERN STATE COLLEGE	--	\$18,232 (Note 2)	\$970,119	\$5,589,209	--	\$6,577,560	\$3,893,220	\$10,470,780
<b>TOTAL</b>	(Note 4)	(Note 4)	(Note 4)	(Note 4)	(Note 4)	\$258,636,124	\$318,691,920	\$577,328,044

Source: Services purchased are based on Fee-For-Service contracts and COF stipends are based on Long Bill appropriations.

Note 1: This includes engineering programs, medical programs, courses at rural community colleges, and other educational programs and courses that are high cost.

Note 2: Reciprocal agreements involve the waiver of the nonresident differential in tuition rates for students from other states attending Colorado colleges in exchange for the same waiver for Colorado students attending college in other states.

Note 3: This consists of \$216,720 for reciprocal agreements and \$2,213,640 for Vestibule labs. Vestibule labs provide instruction and guidance to students to obtain proper skills in areas for degree completion and career development.

Note 4: The amount is not provided because specific services being purchased from the Colorado School of Mines and the University of Colorado have not been finalized.

Note 5: Colorado State University - Pueblo stipends are included in the line above with stipends for Colorado State University - Fort Collins.

## **Final Enterprise Status for Fiscal Year 2006 and Projected Status for Fiscal Year 2007**

To qualify as an enterprise, the Taxpayer's Bill of Rights (TABOR) requires an entity "to be a government-owned business authorized to issue its own revenue bonds and receiving under 10 percent of its annual revenue in grants from all Colorado state and local governments combined." During our review of enterprise designations in 2004 and 2005, we found that the State's higher education institutions possess the characteristics of a government-owned business and have the authority to issue revenue bonds. Regarding the limitation of governmental support to less than 10 percent of annual revenue from state and local grants, TABOR does not define what is meant by "grants." The General Assembly through enabling legislation (Section 23-5-101.5 (2) (b) (I), C.R.S.) has defined a grant to be any direct cash subsidy or other direct contribution of money from the State or any local government in Colorado which is not required to be repaid.

None of the higher education institutions receive any direct cash subsidies or direct cash contributions from local governments but most receive some type of financial support from the State. The table on page 5 shows the amount of total revenue and state support received by higher education enterprises for Fiscal Year 2006. As can be seen from this table, all of the institutions that have been designated as TABOR-exempt enterprises received less than 10 percent of their total revenue from the State for Fiscal Year 2006 and thereby qualified for enterprise status.

It should be noted that three of the institutions received economic development and preservation funds through fee-for-service contracts. For Fiscal Year 2006, Adams State College received \$1,187,473 of such funds, Fort Lewis College received \$2,537,022, and Western State College of Colorado received \$1,976,415. As part of our review of fee-for-service contracts in 2005, we determined that the receipt of such funds constitutes state support. The reason is that it is not clear that a market exchange between the Department of Higher Education and the institutions takes place because the services cannot be specifically identified or measured. Even though the statute provides for purchase of educational services that may increase economic development opportunities, we are not able to determine that the value of economic development and preservation services provided by higher education institutions is essentially equal to the purchase price in the contract.

We discussed our concerns about the purchase of economic development and preservation services in fee-for-service contracts with the Department of Higher Education in 2005. The Department subsequently evaluated this issue and decided to continue purchasing educational services that may increase economic development opportunities as provided in the statute. The Department believes that it will be able to better value those educational services for Fiscal Year 2007 after the funding model study is completed (see discussion of study below). For Fiscal Year 2007, Adams State College will receive \$1,194,255 of economic development and preservation funds, Fort Lewis College will receive \$3,877,833, and Western State College of Colorado will receive \$970,119.

The table on page 6 shows the estimated amount of total revenue and state support to be received by higher education enterprises for Fiscal Year 2007. Based on current estimates, all eleven higher education institutions are projected to be under the 10 percent threshold for governmental support and expected to achieve enterprise status for Fiscal Year 2007.

**HIGHER EDUCATION ENTERPRISES  
ACTUAL TOTAL REVENUE AND STATE SUPPORT  
FISCAL YEAR 2006**

	TOTAL REVENUE	STATE SUPPORT— GENERAL FUND APPROPRIATIONS	STATE SUPPORT— CAPITAL CONTRIBUTIONS (Note 1)	OTHER STATE SUPPORT	TOTAL STATE SUPPORT	STATE SUPPORT AS A PERCENT OF TOTAL REVENUE
ADAMS STATE COLLEGE	\$36,734,730	--	--	\$1,187,473 (Note 2)	\$1,187,473	3.2%
COLORADO COMMUNITY COLLEGE SYSTEM	\$429,162,935	\$23,621,070 (Note 3)	\$1,691,665	--	\$25,312,735	5.9%
COLORADO SCHOOL OF MINES	\$124,464,679	--	\$1,686,868	--	\$1,686,868	1.4%
COLORADO STATE UNIVERSITY - FORT COLLINS	\$639,526,648	--	\$125,330	--	\$125,330	0.0%
COLORADO STATE UNIVERSITY - PUEBLO	\$51,022,860	--	\$1,261,669		\$1,261,669	2.5%
FORT LEWIS COLLEGE	\$51,652,672	--	\$6,125	\$2,537,022 (Note 2)	\$2,543,147	4.9%
MESA STATE COLLEGE	\$50,409,509	--	\$11,598	--	\$11,598	0.0%
METROPOLITAN STATE COLLEGE OF DENVER	\$115,956,071	--	--	--	\$0	0.0%
UNIVERSITY OF COLORADO	\$1,940,565,070	--	\$1,703,643	\$6,985,680 (Note 4)	\$8,689,323	0.4%
UNIVERSITY OF NORTHERN COLORADO	\$142,766,974	--	\$1,290,484	--	\$1,290,484	0.9%
WESTERN STATE COLLEGE OF COLORADO	\$32,985,175	--	\$389,391	\$1,976,415 (Note 2)	\$2,365,806	7.2%

Source: Amounts are from unaudited Fiscal Year 2006 financial statements.

Note 1: Represents available capital funds used during Fiscal Year 2006 and may not equal capital funds appropriated for any one year.

Note 2: Consists of economic development and preservation funds included in the Fiscal Year 2006 Fee-For-Service contract.

Note 3: Includes appropriations of \$19,996,048 for the Colorado Vocational Act and \$3,625,022 for other programs. It excludes \$21,107,462 of appropriations that are passed through the System to local district colleges and area vocational schools. The Colorado Community Colleges System is seeking to change the funding mechanism for Colorado Vocational Act monies it receives from a General Fund appropriation to a purchase of services through a fee-for-service contract.

Note 4: Consists of annual debt service payments for Fitzsimons Certificates of Participation.

**HIGHER EDUCATION ENTERPRISES  
ESTIMATED TOTAL REVENUE AND STATE SUPPORT  
FISCAL YEAR 2007**

	TOTAL REVENUE	STATE SUPPORT— GENERAL FUND APPROPRIATIONS	STATE SUPPORT— CAPITAL CONTRIBUTIONS (Note 1)	OTHER STATE SUPPORT	TOTAL STATE SUPPORT	STATE SUPPORT AS A PERCENT OF TOTAL REVENUE
ADAMS STATE COLLEGE	\$39,828,624	--	\$2,072,609	\$1,194,255 (Note 2)	\$3,266,864	8.2%
COLORADO COMMUNITY COLLEGE SYSTEM	\$440,891,440	\$24,260,924 (Note 3)	\$10,924,891	--	\$35,185,815	8.0%
COLORADO SCHOOL OF MINES	\$131,848,691	--	\$3,397,375	--	\$3,397,375	2.6%
COLORADO STATE UNIVERSITY - FORT COLLINS	\$723,405,290	--	\$3,978,587	--	\$3,978,587	0.6%
COLORADO STATE UNIVERSITY - PUEBLO	\$59,214,400	--	\$5,000,000	--	\$5,000,000	8.4%
FORT LEWIS COLLEGE	\$55,272,699	--	\$805,000	\$3,877,833 (Note 2)	\$4,682,833	8.5%
MESA STATE COLLEGE	\$58,385,945	--	\$4,182,023	--	\$4,182,023	7.2%
METROPOLITAN STATE COLLEGE OF DENVER	\$136,044,036	--	--	--	\$0	0.0%
UNIVERSITY OF COLORADO	\$2,072,794,930	--	\$9,488,979	\$13,143,313 (Note 4)	\$22,632,292	1.1%
UNIVERSITY OF NORTHERN COLORADO	\$151,040,911	--	\$3,940,000	--	\$3,940,000	2.6%
WESTERN STATE COLLEGE OF COLORADO	\$31,744,322	--	\$1,320,014	\$970,119 (Note 2)	\$2,290,133	7.2%

Source: Information provided by higher education institutions based on estimates for Fiscal Year 2007.

Note 1: Represents estimated capital funds to be used during Fiscal Year 2007 and may not equal capital funds appropriated for any one year.

Note 2: Consists of economic development and preservation funds included in the Fiscal Year 2007 Fee-For-Service contract.

Note 3: Includes appropriations of \$20,635,902 for the Colorado Vocational Act and \$3,625,022 for other programs. It excludes \$23,303,958 of appropriations passed through to local district colleges and area vocational schools. The Colorado Community Colleges System is seeking to change the funding mechanism for Colorado Vocational Act monies it receives from a General Fund appropriation to a purchase of services through a fee-for-service contract.

Note 4: Consists of annual debt service payments for Fitzsimons Certificates of Participation.

It should be noted that there are six institutions that are projected to be close to the 10 percent TABOR limitation of governmental support for Fiscal Year 2007. These institutions are Adams State College, Colorado Community College System, Colorado State University - Pueblo, Fort Lewis College, Mesa State College, and Western State College of Colorado. The primary reason is the increase of capital contributions from the State for these institutions during Fiscal Year 2007. If even greater amounts of capital funds are contributed in future years, some institutions may not be able to retain their status as a TABOR-exempt enterprise. We discussed this possibility with the Department of Higher Education who said it will evaluate alternative funding mechanisms to prevent higher education institutions from losing their enterprise status. A task force convened in 2005 brought forth several options on alternative funding mechanisms for higher education capital projects. The Department of Higher Education is currently discussing this funding study with the Commission on Higher Education prior to reconvening the task force for final recommendations and implementation steps.

### **Study of Alternative Funding Model for Higher Education Institutions**

In accordance with Section 23-1-105, C.R.S., the Commission on Higher Education (Commission) provides recommendations on the overall funding needs of higher education institutions as part of the State's budgetary process. The recommendations include funding for the College Opportunity Fund program, fee-for-service contracts, and tuition and fee charges. The Commission has developed cost models to identify necessary minimum funding levels for institutions. During the budget cycle, higher education institutions submit budgetary information about mandatory cost changes that will occur during the upcoming budget year (i.e., changes in nondiscretionary costs such as salary, benefit, utility, and some central service costs). The institutions can also submit separate budgetary requests for additional funding to improve the quality of their educational services. The Commission reviews these requests and forwards its funding recommendations to the Office of State Planning and Budgeting and the General Assembly.

The Department of Higher Education has contracted with the National Center for Higher Education Management Systems (NCHEMS) to identify alternative models for funding public higher education institutions in Colorado. According to the Department of Higher Education, the overall purpose of the study is to develop a more sophisticated and equitable method of providing state funding to institutions that have different roles and missions (e.g., research universities, 4-year colleges, community colleges) and varying market abilities for the amount of tuition and fees charged to students. The Department indicates the study will:

- Recognize that there will likely be small year-to-year increases available in state funding.
- Consider how major funding components – general fund monies, tuition, and student financial aid – can be better integrated together into one financing plan. This approach would shift the funding discussion from one of covering costs to focusing on (1) how to fund higher education and what proportion of funding should be from the State and from students and families through tuition revenues, and (2) how much public aid should be provided to assist low income students in accessing higher education.
- Evaluate the comparative funding of state institutions within the State and analyze comparable institutions of other states in terms of revenues per full-time equivalent student and the types and proportions of revenues used to provide funding.

- Evaluate use of a stipend at the graduate level as opposed to the current system of purchasing graduate services through fee-for-service contracts.

The Department believes the outcome of the study will be to provide a road map for the Legislature and other policy makers for addressing inequities and insufficiencies in funding. The study will also help the Department and the Commission to:

- Provide a comprehensive plan for using the College Opportunity Fund program to better carry out state priorities for higher education.
- Make recommendations to the Legislature on the amount of the undergraduate stipend.
- Determine the type and amount of educational services to purchase through fee-for-service contracts.

The planned completion date of the study is October 1, 2006.



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