Staff Recommendation – Modernize and Clarify Financial Aid Statutes

In light of the large increases requested for financial aid, staff recommends that the Committee consider legislation to modernize and clarify financial aid statutes. Financial aid statutes are found in Section 23-3.3-101 through 901, C.R.S. Portions of these statutes have not been modified since 1979 and appear outdated, while other portions were substantially modified by S.B. 10-003. In general, the original statutes gave CCHE substantial authority. As that authority has been pulled back to the General Assembly and the institutions over time, the statutes do not appear to have been consistently modified.

Issue #1 – Who defines what constitutes "Need Based Grants" or "Merit Based Grants"?

Prior to the passage of S.B. 10-003, the Colorado Commission on Higher Education was responsible for administering the financial assistance program with the assistance of institutions "according to policies and procedures established by the Commission". Senate Bill 10-003 replaced this with the following language:

> **Section 23-3.3-102. Assistance program authorized – procedure – audits.** (1) The general assembly hereby authorizes the commission to establish a program of financial assistance, to be operated during any school sessions, including summer sessions for students attending institutions.
> (2) The commission shall determine, by guideline, the institutions eligible for participation in the program and shall annually determine the amount allocated to each institution.
> (3) Each state institution shall administer a financial assistance program according to policies and procedures established by the governing board of the institution.

The bill made no changes to the much older section of statute that effectively authorizes need-based and merit-based aid.

> **23-3.3-501. Scholarship and grant program- funding.** The commission shall use a portion of any moneys remaining after meeting the requirements of parts 2 and 3 of this article [related to the Dependent Tuition Assistance Program and Work Study] to provide other programs of financial assistance based upon financial need, merit, talent, or other criteria established by the commission for students enrolled at institutions.

Staff finds the resulting statutes confusing with respect to who has authority to define "Need Based Grants" or "Merit Based Grants". Neither term is currently defined in statute (definitions for the financial aid article are found at Section 23-3.3-101, C.R.S.).

- Does the Commission have authority to define what is meant by "Need Based Grants" or "Merit Based Grants" if the General Assembly chooses to appropriate into those line items?
- Does it have authority to make any other demand of institutions, such as requiring that state financial aid be directed only to students eligible for in-state funding (residents and ASSET-eligible students)?

Based on conversations with the Department and OLLS, there appears to be consensus that the changes included in S.B. 10-003 were intended to strip CCHE of such authority.

- Yet, if the answers to the above questions are "no", who does have authority to define these terms? May the institutions use any financial aid funds they receive in any manner they choose without regard to the line item titles reflected in the Long Bill? Could they direct the funds to students who are not residents? Establish eligibility for "Need Based Grants" based on anyone with a household income below $100,000? Provide "Merit Based Grants" to a person with a GPA of 1.0?
- If the institutions have flexibility to use the funds but some basic restrictions apply, e.g., if "Need Based Grants" appropriations may only be used by the institutions for people with an expected family contribution that is lower than the institution's cost of attendance, shouldn't statute say this?

In light of this confusion, staff recommends the JBC consider sponsoring legislation to accomplish one or more of the following options:

Option 1: Add statutory language requiring that funds be spent by the institutions consistent with the purposes specified by Long Bill line item titles, footnotes and the definitions in the article. Then, add definitions to the statute for "Need-based Grants", "Work Study" and "Merit Based Grants". Such definitions could be extremely broad, leaving institutions with substantial flexibility.

Option 2: Add language to clarify the Commission's authority to establish broad parameters for institutions' use of appropriated financial aid. This might include, for example,

clarifying Section 23-3.3-102 (1), C.R.S., to specify that the Commission may establish, in consultation with the institutions, general guidelines within which institutionally-administered programs must operate.

Option 3: *[Could be combined with Options 1 or 2]* Provide the Commission authority to review/approve financial assistance program policies and procedures established by the governing boards. Staff recognizes that this might be controversial, but it would restore a mechanism by which CCHE could "smell test" institutional policies to ensure they are consistent with legislative intent as expressed in Long Bill line item titles and footnotes.

Issue #2 – Archaic language/authority of CCHE to transfer funds

> **23-3.3-102 (7).** Each annual budget request submitted by the commission shall provide information on the proposed distribution of the moneys among the programs developed under this article. Subsequent to final appropriation, the commission shall provide to the joint budget committee an allocation proposal specifically identifying the distributions among programs for the coming year. Expenditures in any program shall not exceed the allocation for that program by more than ten percent of such allocation, and the total appropriation for all student aid programs shall not be exceeded.

The language in the statute is somewhat confusing and no longer conforms to current practice or terminology.

- The Commission submits a budget request for appropriations to certain line items—as opposed to a "proposed distribution of moneys among programs".
- It submits an annual report on financial aid actually distributed after a year has closed out. It has also responded to staff questions about distribution of current-year funds, but staff is not aware of an "allocation proposal" submitted subsequent to final appropriation.
- In FY 2012-13, it used the authority under this article, as it has in some prior years, to transfer $190,510 from the appropriation for Need Based Grants to an appropriation for College Opportunity Fund stipends for students attending private institutions, authorized pursuant to Section 23-18-202 (2) (e), C.R.S. It did this on the basis that the COF private stipends are based on Pell-eligibility and thus constitute financial aid and an appropriation for a "like purpose". The Department reports that an Attorney General's opinion supports its authority to make this transfer. Nonetheless, it is not clear to staff that this particular transfer fits under the authority granted in Section 23-3.3-102 (7), C.R.S., given that the COF stipends for students at private institutions are created in a different article.

Staff recommends that the Committee sponsor legislation to update this statute to more clearly conform to current practice. To do this, statute would need to specify that:

- The General Assembly may appropriate funds for the purposes specified in the article;

- The Department has authority to transfer some portion of the total funds appropriated for financial aid among line items (10 percent or some smaller amount); and
- Transfer authority extends to College Opportunity Fund stipends to private institutions.

Staff Recommendation – Consider requiring maintenance/increases in institutional financial aid for low-income families

As discussed above, institutional aid has grown substantially in recent years. However, only a relatively limited portion of it is currently directed to need-based aid for low-income students, and at some of the state's largest institutions, the financial burden on low-income students has increased dramatically. In light of this, and in light of the large financial aid request this year, the Committee should consider the following options:

- In return for the substantial additional funding increases for the Governing Boards in FY 2014-15, ask institutions to agree to maintain or increase institutional aid for low-income (or low- to middle-income) students in FY 2014-15. The Governor has reportedly obtained agreement that the institutions will not increase overall tuition more than 6 percent. However, if institutions choose to make changes to their institutional aid, even with the large increases requested in FY 2014-15, lower income students could potentially see larger increases. This could occur if institutions redirect or reduce the need-based institutional aid they are currently providing.

  Staff believes institutions should be requested to submit letters reflecting their agreement not to increase tuition by more than 6.0 percent in return for additional funding. *The General Assembly might also request that such letters also commit that institutions will not reduce their average per-student institutional-aid commitment to resident students with a household income up to some specified amount ($30,000-$50,000).*

- Consider sponsoring legislation to restore statutory language deleted through S.B. 10-003 (or somewhat different language) that requires institutions to devote a certain percentage of institutional aid to need-based aid for resident students.

  Language struck in S.B. 10-003 included the following at Section 23-18-202 (3) (c) (I), C.R.S.:

  > "If an institution of higher education is designated as an enterprise pursuant to section 23-5-101.7, the institution shall annually allocate at least twenty percent of any increase in undergraduate resident tuition revenues above inflation to need-based financial assistance."

  Staff is not certain that restoring this particular language would be desirable or practical in the current environment, but it is worth discussing with the institutions. The table below compares undergraduate resident tuition revenue with the institutional moneys each institution set aside for need-based versus merit-based aid in FY 2012-13.