

# OFFICE OF LEGISLATIVE LEGAL SERVICES

COLORADO GENERAL ASSEMBLY

COLORADO STATE CAPITOL  
200 EAST COLFAX AVENUE SUITE 091  
DENVER, COLORADO 80203-1716

TEL: 303-866-2045 FAX: 303-866-4157

EMAIL: OLLS.GA@STATE.CO.US

## MEMORANDUM<sup>1</sup>

TO: Statutory Revision Committee

FROM: Julie Pelegrin, Office of Legislative Legal Services

DATE: October 1, 2019

SUBJECT: Concerning changes to align state financial aid statutes with current practice

### Summary

The statutes concerning student financial aid – section 23-3.3-101, et seq., C.R.S., – were originally enacted in 1979, and although they have been amended over the years, they do not reflect the current practice of appropriating money for student financial aid programs by line item and are ambiguous as to the duties and authority that the Colorado Commission on Higher Education (Commission) and the Department of Higher Education (CDHE) currently exercise in allocating student financial aid money to institutions of higher education.

Parts 1, 2, 3, 4, and 5 of article 3.3 and article 3.5 of title 23, C.R.S., may be amended or repealed to provide an accurate description of the existing powers, duties, and practices regarding the student financial aid program and to remove obsolete statutes. Amending and repealing some of these statutes would result in streamlining and reducing the statutes.

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<sup>1</sup> This legal memorandum was prepared by the Office of Legislative Legal Services (OLLS) in the course of its statutory duty to provide staff assistance to the Statutory Revision Committee (SRC). It does not represent an official legal position of the OLLS, SRC, General Assembly, or the state of Colorado, and is not binding on the members of the SRC. This memorandum is intended for use in the legislative process and as information to assist the SRC in the performance of its legislative duties.

The Joint Budget Committee staff brought this issue to the attention of the Joint Budget Committee, which requested the OLLS to prepare a bill draft for the Statutory Revision Committee's consideration. In reviewing the requested changes, the OLLS believes the changes may require significant policy decisions by the General Assembly, which may place this bill beyond the Statutory Revision Committee's charge to "modify or eliminate antiquated, redundant, or contradictory rules of law and to bring the law of this state into harmony with modern conditions ...".<sup>2</sup>

It is the understanding of the OLLS staff that the Joint Budget Committee staff and staff from the CDHE have discussed these proposed changes and that the CDHE and the Commission do not support amending or repealing any portion of article 3.3 of title 23, C.R.S., or repealing article 3.5 of title 23, C.R.S.

## **Analysis**

Under current law, part 1 of article 3.3 of title 23, C.R.S., generally authorizes the Commission to establish a program of financial assistance. Further, the statute requires the Commission to:

- Adopt guidelines for determining which institutions are eligible to participate in the program and annually allocate money to each institution;
- Provide information in its annual budget request for the proposed distribution of money among financial aid programs created in the remaining parts of article 3.3; and
- After the final appropriations, provide to the Joint Budget Committee a proposal for allocating the appropriations among the programs in the coming year.

Parts 3, 4, and 5 of article 3.3 of title 23, C.R.S., consistent with the language in part 1, direct the Commission, out of any money remaining after allocating money to financial aid for dependents of deceased or disabled prisoners of war, National Guard members, law enforcement officers, or firefighters, to allocate money first to the student loan matching program and next to work-study programs and scholarship and grant programs based on need and merit. The statutes do not define need-based or merit-based grants or programs.

In actual practice, the Joint Budget Committee appropriates money for financial aid to dependents of deceased or disabled prisoners of war, National Guard members, law

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<sup>2</sup> § 2-3-902 (1)(d), C.R.S.

enforcement officers, or firefighters and for work-study, need-based, and merit-based financial aid programs by separate line items in the annual long bill. The Commission does not provide a proposal for allocations following the appropriation, and it does not itself decide how much of the total student financial aid appropriation is allocated to work-study programs or need-based or merit-based grants or programs.

In addition, the Commission has adopted policies:

- Limiting financial aid funding to only students who are Colorado residents;
- Limiting the eligibility of students for financial aid based on other factors;
- Setting goals for the various financial aid programs;
- Establishing procedures for determining residency and student need; and
- Establishing minimum administrative requirements for implementing the financial aid programs at institutions of higher education.

While section 23-3.3-102 (1), C.R.S., grants the Commission broad authority "to establish a program of financial assistance," it is arguably ambiguous as to whether the Commission's authority extends to adopting all of these policies. In addition, section 23-3.3-102 (3), C.R.S., directs each state institution and each private institution that participates in the financial aid programs to administer their programs according to policies and procedures established by their respective governing boards. The statute authorizes both the Commission and the institutional governing boards to establish policies and procedures for financial aid programs, but does not allocate the authority to address specific issues between the Commission and the institutions' governing boards.

Article 3.5 of title 23, C.R.S., concerning the Colorado student incentive grant program, was enacted two years before article 3.3 of title 23, C.R.S., and it appears to be completely redundant to article 3.3. Further, article 3.5 has not been funded in several years, because all of the student financial aid funding is appropriated pursuant to article 3.3 of title 23, C.R.S.

## **Statutory Charge<sup>3</sup>**

The financial aid program statutes do not reflect actual practice in appropriating and allocating money for these programs, and they are ambiguous with regard to the

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<sup>3</sup> The Statutory Revision Committee is charged with "[making] an ongoing examination of the statutes of the state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms" and recommending "legislation annually to effect such changes

allocation of authority to adopt policies and procedures concerning these programs. Clarifying the statutory appropriations process and distribution of regulatory authority to reflect what has been the practice of the Joint Budget Committee, the Commission, and the institutional governing boards for several years could be described as removing anachronisms from the law and correcting defects in the law, thereby falling within the Committee's charge. However, amending the statutes to clarify and assign responsibilities and duties with regard to financial aid programs would likely raise many policy considerations and decisions, which suggests a bill making these changes may not fit within the Committee's charge.

## **Proposed Bill**

If approved by the Statutory Revision Committee, a bill to address the issues discussed in this memo would:

- Amend section 23-3.3-101, C.R.S., to add and clarify definitions;
- Repeal and reenact section 23-3.3-102, C.R.S., to specify the appropriations process for student financial aid programs and describe the regulatory authority of the Commission and institutional governing boards regarding student financial aid programs;
- Repeal parts 3 through 5 of article 3.3 and article 3.5 of title 23, C.R.S.; and
- Make necessary conforming amendments.

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in the law as it deems necessary in order to modify or eliminate antiquated, redundant, or contradictory rules of law and to bring the law of this state into harmony with modern conditions." § 2-3-902 (1), C.R.S. In addition, the Committee "shall propose legislation only to streamline, reduce, or repeal provisions of the Colorado Revised Statutes." § 2-3-902 (3), C.R.S.

# ADDENDUM A

## Part 1 of article 3.3 of Title 23, C.R.S.

**23-3.3-101. Definitions.** As used in this article 3.3, unless the context otherwise requires:

(1) "Commission" means the Colorado commission on higher education.

(1.5) "Cost of attendance at a nonpublic institution of higher education" means:

(a) Allowances specified by the commission for room and board and miscellaneous expenses, which shall be the same for nonpublic institutions of higher education as for a representative group of comparable state institutions, as determined by the commission; and

(b) An allowance for tuition and fees equal to the lesser of:

(I) The actual tuition and fees charged by the nonpublic institution of higher education; or

(II) One hundred percent of the combination of actual in-state tuition and fees charged by a representative group of comparable state institutions plus the general fund moneys allocated to support such comparable state institutions.

(2) "In-state student" means a student at an institution of higher education who meets the criteria established by article 7 of this title for classification as an in-state student at a state institution of higher education, but "in-state student" does not include a member of the armed forces of the United States or his dependents who are eligible to obtain in-state tuition status upon moving to Colorado on a permanent change-of-station basis until such individual meets the one-year domicile requirement of section 23-7-102 (5).

(3) "Institution" means an educational institution operating in this state that meets all of the following:

(a) Admits as regular students persons having a certification of graduation from a school providing secondary education or comparable qualifications and persons for enrollment in courses which they reasonably may be expected to complete successfully;

(b) Is accredited by a nationally recognized accrediting agency or association and, in the case of private occupational schools, holds a regular certificate in accordance with the provisions of article 64 of this title 23;

(c) (I) Provides an educational program for which it awards a bachelor's degree;

(II) Provides not less than a two-year program which is acceptable for full credit towards such a degree; or

(III) Provides not less than a six-month program of training to prepare students for gainful employment in a recognized occupation;

(d) Is not a branch program of an institution of higher education whose principal campus and facilities are located outside this state.

(3.5) "Nonpublic institution of higher education" shall have the same meaning as provided in section 23-3.7-102 (3).

(3.7) "Professional degree in theology" means a certificate signifying a person's graduation from a degree program that is:

(a) Devotional in nature or designed to induce religious faith; and

(b) Offered by an institution as preparation for a career in the clergy.

(4) "State institution" means an institution supported in whole or in part by general fund moneys.

(5) "Undergraduate" refers to any program leading toward a bachelor's degree or associate degree or any nondegree program providing training for employment in a recognized occupation.

**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. Each private institution of higher education, as defined in section 23-18-102 (9), that participates in the program of financial assistance established pursuant to this section shall administer a financial assistance program according to policies and procedures established by the governing board of the institution. Each participating nonpublic institution that is not a private institution of higher education shall administer a financial assistance program according to policies and procedures established by the commission. Each institution shall fund its assistance program using state moneys allocated to the institution and institutional moneys.

(3.5) Notwithstanding any provision of this article to the contrary, each participating institution shall adopt policies and procedures to allow a person who meets the following criteria to qualify for financial assistance through the financial assistance programs established pursuant to this article:

(a) The person qualifies as an in-state student; and

(b) The person is enrolled at an institution that participates in the programs of financial assistance established pursuant to this article; and

(c) The person is enrolled in an approved program of preparation, as defined in section 22-60.5-102 (8), C.R.S., for principals.

(4) Program disbursements shall be handled by the institution subject to audit and review.

(5) Upon commencement of participation in the program, no participating institution shall decrease the amount of its own funds spent for student aid below the amount so spent prior to participation in the program.

(6) In determining the amount allocated to each institution that is not a state institution or a nonpublic institution of higher education, the commission shall consider only that portion of financial need which would have existed were the institution's tuition no greater than the highest in-state tuition rate charged by a comparable state institution. In determining the amount allocated to each nonpublic institution of higher education, the commission shall base its determination upon the cost of attendance at a nonpublic institution of higher education.

(7) Each annual budget request submitted by the commission shall provide information on the proposed distribution of 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 commission may require such reports from institutions as are necessary to fulfill the reporting requirements of this subsection (7) and to perform other administrative tasks.

(8) The state auditor or his or her designee shall audit, in accordance with state statute and federal guidelines, the program at any participating institution every other year to review residency determinations, needs analyses, awards, payment procedures, and such other practices as may be necessary to ensure that the program is being properly administered, but the audit shall be limited to the administration of the program at the participating institution. The state auditor may accept an audit of the program from an institution that is not a state institution from such institution's independent auditor. The cost of conducting audits of the program at an institution that is not a state institution shall be borne by such institution.

(9) Repealed.

#### **Part 3 of Article 3.3 of Title 23, C.R.S.**

**23-3.3-301. Student loan matching program - funding.** Out of any moneys provided for the financial assistance program authorized by section 23-3.3-102 and remaining after meeting the requirements of part 2 of this article, the commission shall provide the matching funds required for federal allocations to institutions for student loan programs.

#### **Part 4 of Article 3.3 of Title 23, C.R.S.**

**23-3.3-401. Work-study program established - requirements.** (1) The commission shall use a portion of any moneys remaining after meeting the requirements of parts 2 and 3 of this article to provide a work-study program of employment of qualifying students in good standing with the institution in which they are enrolled in positions that are directly under the control of the institution in which the student is enrolled or in positions with nonprofit organizations, governmental agencies, or for-profit organizations with which the institution may execute student employment contracts.

(2) Any in-state student who is enrolled or accepted for enrollment at an institution as an undergraduate may qualify for participation in the work-study program established pursuant to this section.

(3) Funds appropriated to the commission may also be used by the commission in conjunction with and to supplement funds for current job opportunities or to supplement or match funds made available through any other public or private program for financial assistance. A sum not to exceed thirty percent of the funds allocated by the commission for the work-study program may be used to provide funding on a basis other than financial need. A sum of not less than seventy percent of such money shall be used for students demonstrating financial need.

**Part 5 of Article 3.3 of Title 23, C.R.S.**

**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 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.

**Article 3.5 of Title 23, C.R.S.**

**23-3.5-101. Legislative declaration.** The general assembly hereby declares that it is the policy of this state, within appropriations available for such purpose, to provide assistance to Colorado in-state students attending institutions of higher education, by utilizing federal and other moneys available for such purpose.

**23-3.5-102. Definitions.** As used in this article 3.5, unless the context otherwise requires:

(1) "Commission" means the Colorado commission on higher education.

(2) "In-state student" means an undergraduate student at an institution of higher education who meets the criteria established by article 7 of this title for classification as an in-state student at a state institution of higher education, but "in-state student" does not include a member of the armed forces of the United States or his dependents who are eligible to obtain in-state tuition status upon moving to Colorado on a permanent change-of-station basis until such individual meets the one-year domicile requirement of section 23-7-102 (5).

(3) (a) "Institution of higher education" means an educational institution operating in this state that:

(I) Admits as regular students only persons having a certification of graduation from a school providing secondary education or the recognized equivalent of such a certificate;

(II) Is accredited by a nationally recognized accrediting agency or association and, in the case of private occupational schools, holds a regular certificate from the private occupational school division in accordance with the provisions of article 64 of this title 23, or is regulated or approved pursuant to any other statute;

(III) (A) Provides an educational program for which it awards a bachelor's degree; or

(B) Provides not less than a two-year program which is acceptable for full credit towards such a degree; or

(C) Provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation; or

(D) Is a private occupational school providing not less than a six-month program of training to prepare students for gainful employment in a recognized occupation;

(IV) Was in operation in this state as of January 1, 1999, or has been in operation in this state for a minimum of ten academic years.

(b) The term "institution of higher education" does not include a branch program of an institution of higher education whose principal campus and facilities are located outside this state, unless the institution operating the branch program has received a certificate of approval from the private occupational school division in accordance with the provisions of article 64 of this title 23.

(4) "Nonpublic institution" means an educational institution which receives no support from general fund moneys in support of its operating costs.

(5) "Professional degree in theology" means a certificate signifying a person's graduation from a degree program that is:

(a) Devotional in nature or designed to induce religious faith; and

(b) Offered by an institution as preparation for a career in the clergy.

**23-3.5-103. Grant program authorized - administration.** (1) The general assembly hereby authorizes the commission to establish a grant program for in-state students having financial need, to be administered in accordance with federal law and regulations and guidelines established by the commission.

(2) The commission shall determine, by guideline, the institutions of higher education eligible for participation in the grant program, and each eligible institution of higher education shall recommend in-state students to the commission for receipt of a grant.

(3) Grant program disbursements shall be handled by the institution of higher education, subject to audit and review as provided in section 23-3.5-104.

(4) Upon commencement of participation in the grant program, no participating institution of higher education shall decrease the amount of its own funds spent for student aid below the amount so spent prior to participation in the grant program.

(5) In determining the amount of a grant, the commission shall consider only that portion of an in-state student's financial need which would have existed were the nonpublic institution's tuition no greater than the highest in-state tuition rate charged by a comparable state institution of higher education.

**23-3.5-103.5. Assistance to professional theology students prohibited.** (1) The guidelines established by the commission pursuant to section 23-3.5-103 (1) shall include:

(a) A prohibition against the awarding of any financial assistance pursuant to this article to a student who is pursuing a professional degree in theology; except that the prohibition described in this section shall not apply to financial assistance that is awarded to a student from a federal program, including but not limited to Title IV of the federal "Higher Education Act of 1965", 20 U.S.C. sec. 1070, as amended; and

(b) A requirement that an institution or nonpublic institution of higher education that seeks to award financial assistance to a student pursuant to this article certify that the student is not pursuing a professional degree in theology.

**23-3.5-104. Audit and review.** The state auditor or his designee shall audit, in accordance with federal and commission guidelines, the grant program at any participating institution of higher education every other year to review residency determinations, needs analyses, awards, payment procedures, and such other practices as may be necessary to ensure that the grant program is being properly administered, but such audit shall be limited to the administration of the grant program at the participating institution of higher education. The state auditor may accept an audit of the program from an institution not supported in whole or in part by the general fund from the institution's independent auditor. The cost of conducting audits of the program at an institution not supported in whole or in part by the general fund shall be borne by the institution.

**23-3.5-105. Determination of eligibility. (Repealed)**

**23-3.5-106. Determination of invalidity.** A final judicial determination that this article is invalid as applied to any individual institution of higher education or student shall not operate to terminate any grant provided pursuant to this article to any other institution of higher education or student.