



Dora
Department of Regulatory Agencies

Office of Policy, Research and Regulatory Reform

2010 Sunset Review: Fixed Tuition and Fee Rate Program

October 15, 2010





Executive Director's Office

Barbara J. Kelley
Executive Director

Bill Ritter, Jr.
Governor

October 15, 2010

Members of the Colorado General Assembly
c/o the Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the General Assembly:

The mission of the Department of Regulatory Agencies (DORA) is consumer protection. As a part of the Executive Director's Office within DORA, the Office of Policy, Research and Regulatory Reform seeks to fulfill its statutorily mandated responsibility to conduct sunset reviews with a focus on protecting the health, safety and welfare of all Coloradans.

DORA has completed the evaluation of the Colorado Fixed Tuition and Fee Rate Program. I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 2011 legislative committee of reference. The report is submitted pursuant to section 24-34-104(8)(a), of the Colorado Revised Statutes (C.R.S.), which states in part:

The department of regulatory agencies shall conduct an analysis of the performance of each division, board or agency or each function scheduled for termination under this section...

The department of regulatory agencies shall submit a report and supporting materials to the office of legislative legal services no later than October 15 of the year preceding the date established for termination....

The report discusses the question of whether there is a need for the regulation provided under Section 131 of Article 5 of Title 23, C.R.S. The report also discusses the effectiveness of the Colorado Department of Higher Education staff in carrying out the intent of the statutes and makes recommendations for statutory changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

Barbara J. Kelley
Executive Director





Bill Ritter, Jr.
Governor

Barbara J. Kelley
Executive Director

**2010 Sunset Review:
Colorado Fixed Tuition and Fee Rate Program**

Summary

What Is The Colorado Fixed Tuition and Fee Rate Program?

The Colorado Fixed Tuition and Fee Rate Program allows state higher education institutions to enter into a contract with a willing Colorado-resident student that fixes tuition and fees for four years.

Who Offers The Program?

At this time, no institutions have implemented a program.

Where Do I Get the Full Report?

The full sunset review can be found on the internet at: www.dora.state.co.us/opr/oprpublications.htm.

Key Recommendations

Continue the fixed tuition and fee rate program and do not schedule any additional sunset reviews.

Section 23-5-131, Colorado Revised Statutes, (Act) allows any state enterprise institution of higher education to establish a voluntary fixed tuition and fee rate program for Colorado-resident students.

To date no institution of higher education has implemented a program. Without a firm, long-term funding commitment from the state, a program is thought to be impractical.

Because it is permissive in nature, it is not clear that an act of the General Assembly was necessary for a governing board to adopt a program. However, because the General Assembly did act, repeal of the Act could be interpreted to mean that the General Assembly intends to prohibit the future establishment of a program. If that is the case, repeal of the program could do more harm than good.

Notwithstanding, the Act does not authorize a regulatory program. The establishment of a program is entirely discretionary with each enterprise institution. Given the obligation of the Department of Higher Education to monitor any program which may be established, it does not appear that future sunset reviews would yield very productive or instructive results to the General Assembly. To continue such reviews would not be the most efficient use of state resources, or the sunset review process.

Major Contacts Made During This Review

Colorado Department of Higher Education
Colorado Community College System
Colorado State University System
Colorado University System
Adams State College
Colorado School of Mines
Fort Lewis College
Mesa State College
Metropolitan State College
University of Northern Colorado
Western State College

What is a Sunset Review?

A sunset review is a periodic assessment of state boards, programs, and functions to determine whether or not they should be continued by the legislature. Sunset reviews focus on creating the least restrictive form of regulation consistent with protecting the public. In formulating recommendations, sunset reviews consider the public's right to consistent, high quality professional or occupational services and the ability of businesses to exist and thrive in a competitive market, free from unnecessary regulation.

Sunset Reviews are Prepared by:
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Background

Introduction

Enacted in 1976, Colorado's sunset law was the first of its kind in the United States. A sunset provision repeals all or part of a law after a specific date, unless the legislature affirmatively acts to extend it. During the sunset review process, the Department of Regulatory Agencies (DORA) conducts a thorough evaluation of such programs based upon specific statutory criteria¹ and solicits diverse input from a broad spectrum of stakeholders including consumers, government agencies, public advocacy groups, and professional associations.

Sunset reviews are based on the following statutory criteria:

- Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters;
- Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;
- Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;
- Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

¹ Criteria may be found at § 24-34-104, C.R.S.

Not all of these criteria apply to sunset reviews of programs that do not regulate professions or occupations. However, DORA must still evaluate whether a program needs to exist to protect the public health, safety, and welfare; whether the level of regulation established for the program is the least restrictive consistent with the public interest; whether the state administers the program efficiently and effectively; and whether administrative and statutory changes are necessary to enhance the public interest.

Sunset Process

Programs scheduled for sunset review receive a comprehensive analysis. The review includes a thorough dialogue with agency officials and other stakeholders. Anyone can submit input on any upcoming sunrise or sunset review via DORA's website at: www.dora.state.co.us/pls/real/OPR_Review_Comments.Main.

The functions of the Colorado Department of Higher Education (DHE) relating to Section 131 of Article 5 of Title 23, Colorado Revised Statutes (C.R.S.), shall terminate on July 1, 2011, unless continued by the General Assembly. During the year prior to this date, it is the duty of DORA to conduct an analysis and evaluation of the DHE pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed fixed tuition and fee rate programs should be continued for the protection of the public and to evaluate the performance of the staff of the DHE. During this review, the DHE must demonstrate that the programs serve to protect the public health, safety or welfare, and that the programs are the least restrictive consistent with protecting the public. DORA's findings and recommendations are submitted via this report to the legislative committee of reference of the Colorado General Assembly.

Methodology

As part of this review, DORA staff contacted DHE staff, contacted the governing board of each Colorado enterprise-designated institution of higher education, reviewed Colorado statutes, and reviewed similar programs of private universities and other states' public university systems.

Fixed Rate Tuition

Multiple institutions of higher education around the United States offer some sort of fixed rate tuition program to encourage student matriculation. The programs, also known as level tuition rates, tuition locks, tuition guarantees, guaranteed tuition rates, guaranteed tuition plans, stable tuition, block tuition, and fixed tuition rates, offer predictability in financial planning.² Programs that fix the cost of education also provide an incentive for students to graduate on time by allowing only a predetermined time to finish before the cost increases.³

There are programs of this type at public colleges and universities, yet, it appears that the majority are established at private institutions.⁴

While program details vary from institution to institution, the fixed tuition programs are all very similar in purpose and form. The following description from the George Washington University (GW) program is fairly typical among program offerings:

Through the University's innovative fixed-rate tuition plan, students no longer need to be concerned about annual tuition increases. The tuition you pay as an entering student remains fixed for your undergraduate program provided you maintain continuous full-time enrollment and are registered for a minimum of 12 semester hours of study each fall and spring term. Students also have the flexibility of a tuition fixed for up to ten semesters of study should a fifth year be required to achieve their academic goals. There are no additional fees except for a minimal Student Association fee. So, right up front it allows families to know the cost of a GW education, not just for the first year, but through the conclusion of a degree program.⁵

² FinAid, *Tuition Freezes, Tuition Cuts, and Level Tuition*. Retrieved June 15, 2010, from <http://www.finaid.org/questions/tuitionfreeze.phtml>

³ University of Texas at Dallas, *Guaranteed Tuition Rate Plan*. Retrieved June 15, 2010, from <http://www.utdallas.edu/tuition/guarantee/>

⁴ FinAid, *Tuition Freezes, Tuition Cuts, and Level Tuition*. Retrieved June 15, 2010, from <http://www.finaid.org/questions/tuitionfreeze.phtml>

⁵ George Washington University, *Fixed Tuition at GW*. Retrieved July 1, 2010, from <http://www.gwu.edu/apply/costsfinancialplanning/undergraduate/costofattendance/fixedituitionatgw>

Legal Framework

With the passage of House Bill 1207, during the 2004 legislative session, the General Assembly enabled governing boards of enterprise institutions of higher education to establish voluntary fixed tuition and fee rate programs. The programs could begin with the 2005-2006 academic year.⁶ The Act allows fixed tuition and fee rates to be specified in a contract between an institution and a willing Colorado-resident student enrolled in the institution.⁷

A single institution or a group of institutions of higher education, may be designated an enterprise institution when it receives less than 10 percent of its revenue from all Colorado state and local governments combined. Once an institution is designated an enterprise, it is not subject to the provisions of Section 20 of Article X of the Colorado Constitution, the Taxpayer Bill of Rights.⁸

The Act directs that a governing board of an enterprise institution choosing to establish a program, also establish guidelines for any institution under its control, and submit them to the Colorado Commission on Higher Education for review and approval.⁹ The guidelines must include, at minimum, “the degree of flexibility a student has in changing majors or degree programs without voiding a fixed-rate contract.”¹⁰

The Act further directs that each participating institution “shall publish information relating to the fixed-rate contract option in the institution's course catalog or student handbook and on the institutional web site.”¹¹

Additionally, if a student is unable to complete a degree program within the contracted time because a course was unavailable, the institution must supply the course without charge.¹²

⁶ § 23-5-131(2), C.R.S.

⁷ §§ 23-5-131(1) (b),(d) and 23-5-131(2), C.R.S.

⁸ § 23-5-101.7(2), C.R.S.

⁹ § 23-5-131(4)(b), C.R.S.

¹⁰ § 23-5-131(4)(a), C.R.S.

¹¹ § 23-5-131(4)(c), C.R.S.

¹² § 23-5-131(3), C.R.S.

Program Description and Administration

Section 23-5-131(2), Colorado Revised Statutes, grants governing boards of enterprise institutions of higher education, the permissive authority to establish a voluntary fixed tuition and fee rate program. The permissive nature of the statute implies that the development and implementation of a program is contingent on a governing board's belief that a program would be mutually beneficial to the institution and participating students. As of the writing of this sunset review, no public Colorado higher education institutions chose to adopt a fixed rate payment option.

Analysis and Recommendation

Recommendation 1 – Continue the fixed tuition and fee rate program and do not schedule any additional sunset reviews.

Section 23-5-131, Colorado Revised Statutes, (Act) grants a governing board of an enterprise institution of higher education the authority to establish a voluntary fixed tuition and fee rate program for Colorado-resident students.

No public Colorado institution of higher education has implemented a program. The institutions that explained their reluctance to establish a program to the Department of Regulatory Agencies (DORA) expressed a concern with the volatility and uncertainty of state financial support for higher education as the major reason. They also questioned how program development might influence tuition rates in the coming years. Without a firm, long-term funding commitment from the state for operations, controlled maintenance, and capital construction, building a viable flat rate tuition and fee program, that could sustain operations, is not viewed as feasible.

It appears that the majority of the existing programs nationwide are established at private schools. It is unclear whether a fixed rate tuition program at a public institution can survive a recession. It is common for state legislatures to cut support for higher education during recessionary times and the institutions are forced to raise tuition to compensate.¹³ The private schools are better able to build a buffer into the rate or increase the cost for incoming students to make up for any shortfall, since they cannot increase rates for upperclassmen enrolled in a program.

Research illustrates a mixed attitude toward programs. Georgia eliminated its “Fixed for Four” programs during the fall of 2009 after hundreds of millions of dollars were cut from higher education. Tuition increases of up to 16 percent followed for the students not enrolled in the programs.¹⁴ Regardless, Arizona State University is offering a fixed rate tuition plan to both resident and nonresident degree-seeking undergraduate students for fall 2010. The stated goal of the plan is to provide tuition predictability not tuition savings.¹⁵

There are also two programs in Colorado institutions similar to those enabled by the Act. The University of Colorado–Boulder (CU) has a flat fee program for nonresident students. Because there are no tuition caps on nonresident tuition, a cushion is built into charges for each new student cohort that adds flexibility not otherwise available to Colorado-resident students.

¹³ FinAid, *Tuition Freezes, Tuition Cuts, and Level Tuition*. Retrieved June 15, 2010, from <http://www.finaid.org/questions/tuitionfreeze.phtml>

¹⁴ Washington Examiner, *Georgia Regents OK up to 16 percent tuition hike to help make up for state funding cuts*. Retrieved June 15, 2010, from <http://www.washingtonexaminer.com/economy/georgia-regents-ok-up-to-16-percent-tuition-hike-to-help-make-up-for-state-funding-cuts-93452359.html>

¹⁵ Arizona State University, *Fixed Rate Tuition Plan*. Retrieved June 15, 2010, from <http://students.asu.edu/fixedrateplan>

Additionally, Colorado State University-Global Campus (CSU-GC) charges a flat rate for students as long as they make progress toward a degree. CSU-GC is not eligible to receive funding from the Colorado College Opportunity Fund available to Colorado-resident students. Therefore, it does not use the traditional resident/nonresident tuition classification scheme. Without the resident/nonresident classifications, it does not meet program guidelines.

Because it is permissive in nature, it is not clear that an act of the General Assembly was necessary for a governing board to adopt a program. Neither the CU nor the CSU-GC program needed statutory permission for enactment and both exist with the flexibility to help endure macro-economic undulations. However, as noted above, both of these programs affect student populations not subject to the in-state student tuition cap. In the present circumstances, because the General Assembly did act, repeal of the Act could be interpreted to mean that the General Assembly intends to prohibit the future establishment of a program. If that is the case, repeal of the Act could do more harm than good if there comes a time when this tool could be used to benefit enterprise institutions.

The Act does not authorize a regulatory program. It does not govern the conduct of professional practitioners who are registered, certified, or licensed. Sunset reviews are generally intended to examine regulatory programs. It makes sense for the General Assembly to require DORA to perform an initial sunset review on programs such as this one to ensure the program has been put in place as intended, operating in the best interest of Colorado citizens, and realizing initial statutory goals.

The establishment of a program is entirely discretionary with each enterprise institution. That decision will likely be influenced by a number of factors, such as current economic environment, which could vary significantly over a period of time. Given the obligation of the Colorado Department of Higher Education to monitor any program which may be established, it does not appear that future sunset reviews would yield very productive or instructive results. To continue such reviews would not be the most efficient use of state resources, or the sunset review process.

The General Assembly should continue the Act without scheduling additional sunset reviews.