

HIGHER EDUCATION FUNDING IN MONTANA

Introduction

This narrative provides a brief history of the governance and funding of higher education in Montana, as well as a brief discussion of the state funding issues that the legislature will be facing with regard to higher education in the 2013 legislative session.

Higher education funding in Montana is unlike any other state agency due to the sometimes competing forces of the Board of Regents' (BOR) governance authority over the Montana University System (MUS) granted by the Montana Constitution and the exclusive authority of the legislature to appropriate public operating funds, which is also granted by the Montana Constitution. In addition, the diverse nature of funds supporting the university system adds to the complexity of higher education funding in Montana.

Governance of the Montana University System

The governance of the Montana University System underwent a profound change nearly 40 years ago with the adoption of the 1972 Constitution. Under the 1889 Constitution, general control and supervision of the university system was vested with a Board of Education responsible for all Montana public education, including higher education. The 1889 Constitution provided that the duties and powers of the Board were prescribed and regulated by law. Practically speaking, the legislature had a significant amount of control over the Board and university system, including management and academic areas.ⁱ Although the governance system had its share of challenges, it remained in effect until Montana's new constitution was adopted in 1972.

Montana's 1972 Constitution created the Board of Regents to govern higher education. The 1972 Constitution grants full power, responsibility, and authority to supervise, coordinates, manage and control the Montana University System to the Board of Regents. With this change, the power and control over the university system shifted to the board, limited only by the language of the Constitution, while the legislature retained the power to appropriate and audit funds.ⁱⁱ

Legislative Appropriation Authority

The appropriation of funds is a legislative power in both the 1889 and 1972 Montana Constitutions.

In a 1975 Montana Supreme Court ruling addressing the authority of the newly formed Board of Regents and the scope of the appropriation power of the Montana legislature, the court provided guidelines the legislature must consider in the appropriation process,ⁱⁱⁱ including:

- The Board of Regents is subject to the legislature's appropriation power and public policy, but the legislature cannot do indirectly through the means of line item appropriations and conditions what is impermissible for it to do directly.

While the court recognized the importance of line item appropriations to the legislative process to develop a budget and ensure strict accountability of state funds, it noted line items could not be used to infringe upon the Board of Regents authority to "supervise, coordinate, manage and control the university system". For example, the legislature cannot eliminate a specific program on a university campus, such as the law school, because this is a management decision of the Board of Regents.

- The legislative appropriation power extends beyond the general fund and encompasses all those public operating funds of state government, but does not extend to private funds received by state government that are restricted by law, trust agreement, or contract. Student tuition and fees and foundation donations are considered private funds.
- The legislature may, within reason, attach conditions to university system appropriations that, if accepted by the Board of Regents, bind them to the conditions.

The legislature has conditioned appropriations to the university system. An example of an appropriation condition set by the legislature is contained in HB 2 passed by the 60th Legislature whereby the line item appropriation for the WICHE/WWAMI program was restricted such that any unspent appropriation could only be used for other student assistance programs.

Examples of appropriation conditions that are unreasonable in the court's view include limiting salary increases for university system personnel, and directly attempting to set tuition rates.

Finally, the court said that the regents' power to govern must be harmonized with the legislature's power to appropriate, set public policy, and ensure strict accountability of state revenues and expenditures.

State Appropriations

The legislature considers many factors to develop the state appropriation for the MUS including:

- State funds available
- Legislative priorities
- Governor's recommendation
- Board of Regents' requests
- Projected student enrollment
- Base year actual expenditures, funding, present law adjustments, and state percent share of expenditures

State funds are an important component of university funding because:

- State general fund support is the second largest source of current unrestricted revenue for the MUS, after tuition
- General fund appropriations in House Bill 2 provide the vehicle with which the legislature may have a public policy impact upon the MUS

Since the 1995 legislative session, the legislature has combined the line item appropriation for the MUS educational units and most of the programs in the Office of the Commissioner of Higher Education into a single, biennial lump-sum appropriation. The BOR then reallocates the lump sum appropriation to MUS agencies and educational units. [Note: the BOR reallocation typically closely reflects the original legislative appropriation.] Appropriations for the MUS research and public service agencies, community colleges, and the tribal college assistance program are contained in line items in the general appropriations act (House Bill 2). Long range building funds are appropriated in House Bill 5 for capital projects. The legislature also appropriates general fund to the MUS in the biennial pay plan bill.

University Funds

In addition to the state funds appropriated by the legislature, the MUS is funded from several other sources, including tuition and fees, federal and private grants, service fees, service operations, and other sources. The university system classifies its revenue and expenditures into various fund types using national accounting standards common to universities and colleges.

State funds appropriated for general operations and tuition are classified as “current unrestricted” funds. This is the university-equivalent of the state general fund. Revenues from state appropriations and tuition constitute the primary revenues for the current unrestricted fund at university educational units. The state funds appropriated to the university system for general operations (i.e. HB 2, pay plan) are deposited to the current unrestricted fund at each unit.

Other fund types include current restricted (federal grants), current designated (course-specific and service fees), current auxiliary (service operations such as dormitories), student loan funds, endowment funds, plant funds, and agency funds (fiduciary).

MUS Budget Approval

The Board of Regents is responsible for establishing the overall budget necessary to fund postsecondary education in Montana; generating sufficient revenues, in addition to state funds authorized by the legislature, to fund the overall budget; and managing the system resources to live within its means. Annually in early fall, the Montana Board of Regents establishes the annual operating budget for all MUS agencies and programs. The operating budget identifies the expenditure level and projected revenues for each university fund.

State statute (17-7-138(2), MCA) authorizes the MUS to expend state funds appropriated in the general appropriations act contingent upon regent approval by October 1 of each fiscal year of a comprehensive operating budget that includes the current unrestricted fund and the other university funds listed above and includes detailed revenue, expenditures, and anticipated fund balances.

Tuition Revenue and Rates

The Board of Regents is the sole authority to set the tuition rates for the MUS. Tuition revenue is not included in the general appropriations act because it is considered private revenue, and therefore, not subject to appropriation by the legislature. Tuition is the single largest revenue source for the MUS education units general operating budget; state funds appropriated by the legislature are the second largest revenue source. The key factors influencing student tuition rates are available state funds and the expenditure level authorized by the Board of Regents.

State Percent Share

The state percent share is that proportion of the current unrestricted fund for the university educational units that is funded by state funds (general fund and six mill levy revenue). In FY 1988 the state percent share of the university educational units’ budget was 74 percent while in FY 2013 the state percent share was about 34 percent. This percentage is important because historically (the 2009 biennium being a recent exception) the actual state percent share level from the base year budget is used to drive state funding levels to support present law programs in the next budget. In the 2009 biennium, the legislature approved the Governor’s College Affordability Plan proposal that funded budget increases based in the proportion of Montana resident students and regional exchange students to total enrollment (about 85 percent) and resulted in zero tuition rate increases for Montana students in FY 2008 and FY 2009.

Funding Issues in the 2013 Legislative Session

The executive budget proposes a tuition freeze for the 2015 biennium. However, as discussed in the LFD Budget Analysis, the executive’s plan lacks the formality and substance of the College Affordability Plan forged between the MUS, Governor, and Legislature in the 2007 session. The Montana University System has indicated that there is no agreement at this point, but they are interested in reaching agreement. If it is the desire of the legislature to reach agreement with the MUS and the executive branch to provide a level of funding that allows for a two year tuition freeze, staff strongly recommends that the entire agreement, including funding, expectations, assumptions, and all relevant details be contained in an agreement document and duly noted in the HB 2 narrative accompanying the bill and the LFD Fiscal Report that records the legislative action.

ⁱ Eddy McClure, “The Structure of Higher Education in Montana: Meandering the Murky Line,” Montana Legislative Services Division, Helena, Montana, September 1999, p.2.

ⁱⁱ Ibid., p.5.

ⁱⁱⁱ Ibid., pp. 21-23.

THE STRUCTURE OF HIGHER EDUCATION IN MONTANA:

MEANDERING THE MURKY LINE

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September 1999

This legal memorandum is in response to a request by the Joint Subcommittee on Postsecondary Education Policy and Budget for background on the history of the Board of Regents and an analysis of the constitutional and statutory authority of the Board of Regents and the Montana Legislature over higher education. Part I will include a brief history of the governance of higher education under Article XI, section 11, of the 1889 Montana Constitution and creation of the Board of Regents under Article X, section 9, of the 1972 Montana Constitution. Part II will examine the Legislature's power of appropriation under both the 1889 and 1972 Montana Constitutions. Part III will include a discussion of major court decisions interpreting the authority of both the Board of Regents and the Legislature regarding higher education. Part IV will summarize the constitutional and statutory authority of the Board and the Legislature, summarize the pertinent case law, and address the actions necessary to increase state control over the Board of Regents of the University System. This memorandum is not intended as an exhaustive analysis of either the history of the Board of Regents or the appropriation power of the Legislature, but rather is intended to provide a brief overview of the history of the Board of Regents, the Legislative appropriation power, and the pertinent legal issues related to those constitutional powers.

for state teachers colleges, commonly referred to then as "normal schools", and 50,000 acres for establishment and maintenance of agricultural colleges.⁴ Pursuant to this grant, the 1893 Legislature authorized establishment of the College of Agriculture and Mechanical Arts in Bozeman, a state "normal school" or teacher training campus in Dillon, and a School of Mines in Butte.⁵ However, the state's coffers were so low that the School of Mines, authorized in 1893, did not open until 1898, and the Bozeman campus faced immediate financial problems when the State Treasurer refused to release funds.⁶ The 1893 Legislature also enacted legislation requiring the State Board of Education to organize and select the site for the permanent location of the state university in Missoula⁷ and in 1911 and 1913 enacted legislation establishing the law school and the forestry school as departments of the state university in Missoula.⁸

In 1914, in response to criticism about the weakness of higher education and planning, the Board hired its first chancellor.⁹ Less than a year later, however, the Legislature enacted legislation to abolish the position, action that was subsequently vetoed by the Governor.¹⁰ During the economic depression of the 1920s, the Board in 1923 limited enrollment because the four existing campuses lacked the buildings necessary to accommodate the current student numbers.¹¹ Notwithstanding the economic depression and the lack of buildings and adequate operating budgets for existing campuses, the 1925 Legislature approved the establishment of two new campuses in Havre and Billings.¹² As a result, the Legislature reduced funds available to the four existing campuses and forced the Board of Examiners to freeze its funding.¹³ A 1929 report revealed that Montana was spending one-third less on its public campuses than any other state of similar age.¹⁴ In 1930, despite the Depression, the Board persuaded Montana voters to approve a higher education mill levy increase and a new \$4 million bond.¹⁵ After World War II, increasing enrollment exceeded the Board's ability to manage or fund the demand and led to voter approval of a large mill levy increase in 1948.¹⁶ In 1956, the Board, because of rising enrollment, responded by imposing the largest tuition and fee increase in the state's history and raised tuition again 2 years later in 1958.¹⁷

In addition to its financial troubles over the years, the State Board of Education's history includes a pattern of academic and personnel crises including, for example, the firing of an economics professor for publishing a report in 1919 that advocated the increased taxation of Montana's mining interests, the terminations in 1926 of an English professor for assisting a student with a creative writing journal during his spare time and a Business School faculty member for feuding with the university president, and the firing of numerous faculty in the late

With the creation of a separate board for higher education, the governance of the Montana University System was transformed from a purely legislative creation to a constitutional department. The function of defining the powers and duties of the Board shifted from one of absolute legislative prerogative to that of a Board limited only by the express language of the Montana Constitution itself. Under the new Constitution, the role of the Legislature in higher education was narrowed from one of defining all powers and duties of a State Board of Education to one of overseeing the functions of appropriations and audit, setting by statute the terms of office of members, and assigning additional educational institutions to the control of the new Board of Regents. The Senate was given the exclusive function of confirming gubernatorial appointments to the Board.²³

The intent of the framers of the 1972 Constitution as to who has which powers and duties is further evidenced by comparing the powers of the Board of Regents under the provisions of Article X, section 9, with those granted the State Board of Public Education under Article X, section 9. Article X, section 9(3)(a)²⁴ expressly provides that while general supervision over the public school system rests in the Board of Public Education, the Legislature has the prerogative to provide other duties to the Board. No similar language is found in the provisions of Article X, section 9, concerning the Board of Regents.

After adoption of the 1972 Montana Constitution, many of the statutes enacted by the Legislature under the 1889 Constitution were either repealed or amended to remove laws mandating specific action in the area of university curricula or personnel.²⁵ Currently, Title 20, chapter 25, MCA, reflects the Legislature's responsibility in setting public policy in higher education and financial accountability, while recognizing the Board's authority under Article X, section 9, to supervise, coordinate, manage, and control the University System.

Part II

The Appropriation Power of the Legislature

Section 79-410, R.C.M. 1947, of the Treasury Fund Structure Act provided for nine funds in the state treasury: (1) general fund; (2) earmarked revenue fund; (3) sinking fund; (4) federal and private revenue fund; (5) federal and private grant clearance fund; (6) bond proceeds and insurance clearance fund; (7) revolving fund; (8) trust and legacy fund; and (9) agency fund.

Section 79-410(4), R.C.M. 1947, provided:

(4) Federal and private revenue fund. The federal and private revenue fund consists of all expendable moneys deposited in the state treasury from federal or private sources, including trust income, which are to be used for the operation of state government.

Under current law, section 17-2-102(1)(a)(ii), MCA, derived from the original section 79-410(4), R.C.M. 1947, provides:

(ii) the special revenue fund type, which accounts for the proceeds of specific revenue sources (other than expendable trusts or major capital projects) that are legally restricted to expenditure for specified purposes. The financial activities of the special revenue fund type are subdivided, for operational purposes, into the following funds to serve the purpose indicated:

(A) The state special revenue fund consists of money from state and other nonfederal sources deposited in the state treasury that is earmarked for the purposes of defraying particular costs of an agency, program, or function of state government and money from other nonstate or nonfederal sources that is restricted by law or by the terms of an agreement, such as a contract, trust agreement, or donation.

(B) The federal special revenue fund consists of money deposited in the treasury from federal sources, including trust income, that is used for the operation of state government.

Additionally, section 17-2-102, MCA, provides for the following fund categories and types:

The governmental fund category, which includes the:

- (1) general fund;
- (2) special revenue fund type;
- (3) capital projects fund type; and
- (4) debt service fund type.

The proprietary fund category, which includes the:

- (1) enterprise fund type; and
- (2) internal service fund type.

amount of coin and currency requiring deposit exceeds \$100 or total collections exceed \$500. All money, credits, evidences of indebtedness, and securities collected must be deposited at least weekly.

(7) Notwithstanding any other provision of state law, when it is determined to be in the best financial interest of the state, the department may require any money received or collected by any agency of the state to be immediately deposited to the credit of the state treasurer.

While subsection (1) expressly authorizes the deposit of money into either a private bank or other authorized financial institution, subsection (7) provides that when determined to be in the "best financial interest of the state", money collected or received by any state agency, including the Board of Regents, must be deposited to the credit of the State Treasurer. Since better interest rates may be obtained by the state, it is arguably in the "best financial interest of the state" that all money be deposited in a state rather than private account. As a result, the Board of Regents by law is required to deposit all money in the state treasury.

Section 17-8-101, MCA, provides limits on the disbursement of money from the state treasury, and states:

17-8-101. Appropriation and disbursement of money from treasury. (1) For purposes of complying with Article VIII, section 14, of the Montana constitution, money deposited in the general fund, the special revenue fund type (except money deposited in the treasury from nonstate and nonfederal sources restricted by law or by the terms of an agreement, such as a contract, trust agreement, or donation), and the capital projects fund type, with the exception of refunds authorized in subsection (4), may be paid out of the treasury only on appropriation made by law.

(2) Subject to the provisions of subsection (8), money deposited in the enterprise fund type, debt service fund type, internal service fund type, expendable trust fund type, agency fund type, and state special revenue fund from nonstate and nonfederal sources restricted by law or by the terms of an agreement, such as a contract, trust agreement, or donation, may be paid out of the treasury:

(a) by appropriation; or
(b) under general laws, or contracts entered into in pursuance of law, permitting the disbursement.

(3) The pension trust fund type is not considered a part of the state treasury for appropriation purposes. Money deposited in the pension trust fund type may be paid out of the treasury pursuant to general laws, trust agreement, or contract.

(4) Money paid into the state treasury through error or under circumstances such that the state is not legally entitled to retain it and a refund procedure is not otherwise provided by law may be refunded upon the submission of a verified claim approved by the department.

Only 3 years after adoption of the 1972 Constitution, the Montana Supreme Court in the companion cases of State ex rel. Judge v. Legislative Finance Committee³⁰ and Board of Regents v. Judge,³¹ had its first opportunity to analyze both the authority of the newly formed Board of Regents and the scope of the appropriation power of the Montana Legislature as a result of actions taken by the 1973 and 1975 Montana Legislatures.

During the 1973 Regular Session, the Montana Legislature enacted House Bill No. 55, which both appropriated money from the general fund and earmarked revenue accounts to various state agencies, including units of the University System, for the biennium ending June 30, 1975. Some agencies received additional funds during the biennium from the federal government, private donations, and interests, rents, and royalties from state lands.

House Bill No. 55 contained the following conditions and limitations on the expenditures of money:

Section 8. If the operation of a state agency is financed by an appropriation or appropriations from the general fund as well as by appropriations from other sources, the *funds provided by appropriation from the general fund shall be decreased by the amount that the funds received from other sources exceeds the amount from other sources appropriated by the legislature in the 1975 biennial budget*, provided that:

(1) the decrease does not jeopardize the receipt of funds to be received from other sources; and

(2) this section shall not apply to any excess funds if they are to be expended for a new or expanded program approved by the governor, or his designated representative upon a request submitted to him through the budget bureau.

Section 11. In addition to the amounts specifically appropriated by this act, there is hereby appropriated to the Montana university system units all federal funds for existing programs, and those funds related to various supporting facilities and organizations such as auxiliary enterprises. *All other moneys received from all other sources may be made available by an approved budget amendment.*

Section 14. The provisions set forth in this section are limitations on the appropriations made in this act It is the purpose of the legislature in enacting this bill only to appropriate funds and to restrict and limit by its provisions [sic] the amount and conditions under which the appropriations can be expended.

Claiming that these legislative acts infringed on the constitutional powers granted the Regents under Article X, section 9, of the 1972 Constitution, the Board of Regents refused to certify compliance with House Bill No. 271. After the Budget Director voided the University System appropriation, two separate lawsuits were filed related to House Bill No. 271 and Senate Bill No. 401--one by the Governor against the Legislative Finance Committee, alleging that the statute empowering the Finance Committee to approve budget amendments unconstitutionally delegated a power reserved to the entire Legislature, executive officer, or agency, and a second by the Board of Regents against the Governor, alleging that actions by the Legislature and signed by the Governor unconstitutionally infringed on the powers granted to the Regents under Article X, section 9, of the 1972 Constitution.

During oral arguments, the Regents cited changes in the provisions of the 1972 Constitution and argued that the University System and the Board constituted a fourth branch of government with powers that were vested completely in the Regents to the exclusion of the legislative and executive bodies.³² Rejecting that argument, the Court in Board of Regents held that the powers granted the Regents in Article X, section 9, must be read in conjunction with the powers granted the Legislature in Article III, section 1, which divided governmental power into the Legislative, Executive, and Judicial Branches and prohibited encroachment, in Article V, section 1, which vested legislative power exclusively in an elected legislative body, and in Article VIII, section 12, which required the Legislature to insure strict accountability of all revenue received and money spent by the state and counties, cities, towns, and all other local governmental entities.³³

In discussing the constitutional powers involved, the Court in Board of Regents stated:

*Our task then is to harmonize in a practical manner the constitutional power of the legislature to appropriate with the constitutional power of the Regents to supervise, coordinate, manage and control the university system. At the outset, we note that there is not always a clear distinction between these powers*³⁴

The Court in Board of Regents acknowledged that the 1972 Montana Constitution had broadened the scope of the Legislature's appropriation powers. Previous court decisions had limited the scope of the appropriation power to the general fund. The Court cited Article VI, section 9, which required the Governor to submit to the Legislature a budget "setting forth in detail for all operating funds the proposed expenditures and estimated revenue of the state", Article VIII, section 9, which prohibited appropriations by the Legislature from exceeding

possession moneys that would otherwise be deposited in the state treasury, provided that the anonymity of private foundation donors shall be maintained and that private donations shall not be used as an offset to general fund appropriations. (emphasis added)³⁹

In construing the bolded language, the Court reiterated its earlier holding:

Based on our earlier discussion of the legislative appropriation power, *certification cannot be used as a boot-strapping device to gain legislative control over private moneys.* As noted heretofore, *private moneys restricted by law, trust agreement, or contract are beyond the appropriation power.* To the extent then that the certification requirement of Section 12(4) attempts to exert any control over such private moneys or to grant any discretion over such funds to the department of administration, it is unconstitutional.⁴⁰

Under current law, section 17-2-102(1)(a)(ii), MCA, is derived from the original section 79-410(4), R.C.M. 1947, the section construed in Board of Regents. The section provides:

(ii) the special revenue fund type, which accounts for the proceeds of specific revenue sources (other than expendable trusts or major capital projects) that are legally restricted to expenditure for specified purposes. The financial activities of the special revenue fund type are subdivided, for operational purposes, into the following funds to serve the purpose indicated:

(A) The state special revenue fund consists of money from state and other nonfederal sources deposited in the state treasury that is earmarked for the purposes of defraying particular costs of an agency, program, or function of state government and money from other nonstate or nonfederal sources that is restricted by law or by the terms of an agreement, such as a contract, trust agreement, or donation.

(B) The federal special revenue fund consists of money deposited in the treasury from federal sources, including trust income, that is used for the operation of state government.

Private money received by the state and restricted by law, trust agreement, or contract is deposited in the state treasury, but is not subject to the Legislature's appropriation power.

Additionally, the Court held:

... legislative control of higher education through the appropriation process remains. The Regents are a constitutional body in Montana government *subject to the power to appropriate and the public policy of this state.*⁴¹

Section 8. If operation of a state agency is financed by an appropriation or appropriations from the general fund as well as by appropriation from other sources, the *funds provided by appropriation from the general fund shall be decreased by the amount that the funds received from other sources exceeds the amount from other sources appropriated by the legislature in the 1975 biennial budget*, provided that:

(1) the decrease does not jeopardize the receipt of the funds to be received from other sources; and

(2) this section shall not apply to any excess funds if they are to be expended for a new or expanded program approved by the governor, or his designated representative upon a request submitted to him through the budget bureau.

Additionally, sections 11 and 14, respectively, provided:

Section 11. In addition to the amounts specifically appropriated by this act, there is hereby appropriated to the Montana university system units all federal funds for existing programs, and those funds related to various supporting facilities and organizations such as auxiliary enterprises. *All other moneys received from all other sources may be made available by an approved budget amendment.*

Section 14. . . . It is the purpose of the legislature in enacting this bill only to appropriate funds and to restrict and limit by its provisions [sic] the amount and conditions under which the appropriations can be expended. Except as provided in this act, the expenditures of appropriations are hereby subject to the following general and specific provisions:

(1) . . .

(2) . . .

(3) All expenditures of funds appropriated by this act shall be made in accordance with the provisions of 82-109, R.C.M. 1947, which specifies that *expenditures shall be applied against nongeneral fund moneys before general fund moneys.*

Audits of the various university units disclosed funds in the earmarked revenue and income accounts that had been earmarked and received in the 1973-1975 biennium and carried over to the 1975-1977 biennium. The funds were unanticipated nongeneral funds that were not used to offset the general fund nor were they expended prior to expenditure of the general fund appropriation.

Attorney General Woodahl noted that in Regents of University of Michigan v. State, a case cited favorably in Board of Regents, the Michigan Court of Appeals addressed itself to a similar

The 1889 Constitution vested control and supervision in the State Board of Education, but gave full authority to the Legislature by limiting the Board's powers to those that "shall be prescribed and regulated by law". Under this provision, it was the Legislature that not only prescribed the duties and powers of the State Board of Education, but also, after some of the most vocal debates of the Constitutional Convention, statutorily established the location of the various units and departments of the University System. With adoption of the 1972 Constitution, however, a newly created Board of Regents was given "full power, responsibility, and authority to supervise, coordinate, manage and control the Montana university system". As a result, the Legislature that had the authority to decide on the number and location of the various units of the University System under the 1889 Constitution ironically found itself, with adoption of the 1972 Constitution, without any authority to eliminate or directly alter the makeup any of those legislatively created units.

Until 1996, there had been no attempts to alter the power granted the Board of Regents under the 1972 Constitution. On November 5, 1996, the Legislature submitted to the electorate Constitutional Amendment No. 30, which, if approved, would have seen a return to the 1889 system of higher education governance. As drafted, it proposed to amend the Constitution to eliminate the Board of Regents, the State Board of Education, and the Commissioner of Higher Education and replace them with a Department of Education, with a Director appointed by the Governor. The constitutional referendum also proposed creation of an eight-member appointed State Education Commission with duties determined by the Legislature. The voters defeated the referendum by a margin of 63% to 37%.

Without a constitutional amendment similar to CA 30 to either restrict the autonomy of the Board of Regents or to perhaps expand the Legislature's financial authority over nongeneral funds now constitutionally controlled by the Board of Regents, the Court in Board of Regents made it clear that the constitutional power of the Board of Regents to "supervise, coordinate, manage and control the Montana university system" must be harmonized with the constitutional powers of the Legislature.

While the current Constitution vests autonomous power over the University System to the Board of Regents, the power of appropriation belongs exclusively to the Legislature as a whole and cannot be delegated to another branch of government or to a Legislative committee. While previous court decisions had limited the scope of the appropriation power to the general fund, the

the authority of the Board of Regents to "supervise, coordinate, manage and control the university system" is infringed by legislative control over expenditures.

(2) The Legislative appropriation power extends beyond the general fund and encompasses all those public operating funds of state government, but does not extend to private funds received by state government that are restricted by law, trust agreement, or contract.

The Legislature's authority to "appropriate" cannot be confused with its constitutional responsibility to strictly account for all revenue and expenditures. To ensure strict accountability as required by the Constitution and to enable the state's financial records to accurately reflect governmental revenue and expenditures and when it is determined to be in the "best financial interest of the state" under section 17-6-105(7), MCA, state agencies and institutions, including the Board of Regents, are required to deposit all money received to the credit of the State Treasurer rather than in a private bank. As a result, some private money received by the Board is currently deposited in state treasury for auditing and accounting purposes. However, the power of the Legislature to ensure strict accountability of all state funds cannot be used as a "bootstrapping device" to gain legislative control over private money. The fact that private money, such as tuition, student fees, or foundation donations, is deposited into the state treasury does not "convert" the money from private to public funds that are subject to the appropriation power of the Legislature. In other words, the Legislature cannot appropriate money over which it has no constitutional authority.

(3) The Legislature may, within reason, attach conditions to University System appropriations that, if accepted by the Board of Regents, bind them to the conditions.

Under this guideline, the key phrase is "within reason". The courts have sustained conditions that require, on penalty of losing part of the appropriation, such things as annual reports to the Governor, fair and equitable distribution of an appropriation among university departments, and loyalty oaths from teachers and that subject nonteaching employees to workers' compensation laws. On the other hand, as supported by the Court in Board of Regents, a Legislature cannot "condition" money to require that a university move a department or limit salary increases and cannot attempt to *directly* control the amount of tuition charged for attendance. As noted by the Court in Board of Regents, the problem of delineating the area forbidden to the Legislature in conditioning appropriations to the University System is not easily resolved and, arguably, any

ENDNOTES

1. "Voters Wisely Reject Proposed Constitutional Amendment 30 To Eliminate The Montana Board of Regents", Aronofsky, 58 Mont. L. Rev. 333, 347 (1997).
2. Ibid.
3. See Sec. 7, p. 159, L. 1893; Sec. 6, p. 174, L. 1893; Sec. 7, p. 175, L. 1893; and Sec. 12, p. 176, L. 1893.
4. Section 17, Montana Enabling Act, provided:

To the state of Montana: For the establishment and maintenance of a school of mines, one hundred thousand acres; for state normal schools, one hundred thousand acres; for agricultural colleges, in addition to the grant hereinbefore made for that purpose, fifty thousand acres; for the establishment of a state reform school, fifty thousand acres; for the establishment of a deaf and dumb asylum, fifty thousand acres; for public buildings at the capital of the state, in addition to the grant hereinbefore made for that purpose, one hundred and fifty thousand acres.
5. See Sec. 1, p. 171, L. 1893; Sec. 1, p. 176, L. 1893; and Sec. 1, p. 180, L. 1893.
6. Aronofsky, *supra*, at p. 349.
7. See Sec. 1, p. 173, L. 1893.
8. See Secs. 1 and 2, Ch. 31, L. 1911, establishing the law school as a department of the state university in Missoula; Secs. 1 and 2, Ch. 131, L. 1913, establishing the forestry school as a department of the state university in Missoula.
9. See Aronofsky, *supra*, at p. 352.
10. Ibid.
11. Aronofsky, *supra*, at pp. 354-355.
12. Ibid., p. 355.
13. Ibid.
14. Aronofsky, *supra*, at p. 356.
15. Ibid.

(b) The board consists of seven members appointed by the governor, and confirmed by the senate, to overlapping terms as provided by law. The governor, commissioner of higher education and state superintendent of public instruction shall be ex officio non-voting members of the board.

24. Section X, section 9(3)(a), Montana Constitution, provides:

(3) (a) There is a board of public education to exercise general supervision over the public school system and such other public educational institutions as may be assigned by law. Other duties of the board shall be provided by law.

25. See, for example, House Bill No. 21, Ch. 344, L. 1973; House Bill No. 363, Ch. 397, L. 1973.

26. State ex rel. Haynes v. District Court, 106 Mont. 470, 476, 78 P.2d 937 (1938). See also State ex rel. Bonner v. Dixon, 59 Mont. 58, 195 P. 841 (1921); State ex rel. Toomey v. Board of Examiners, 74 Mont. 1, 238 P. 316 (1925).

27. Article VIII, section 14, Montana Constitution, provides:

Section 14. Prohibited payments. Except for interest on the public debt, no money shall be paid out of the treasury unless upon an appropriation made by law and a warrant drawn by the proper officer in pursuance thereof.

28. See State ex rel. Bonner v. Dixon, 59 Mont. 58, 195 P. 841, 845 (1921). See also State ex rel. Tipton v. Erickson, 93 Mont. 466, 19 P.2d 227, 229 (1933) (holding that an appropriation is an Act by which a named sum of money is set apart in the treasury and devoted to the payment of particular claims or demands).

29. See Board of Regents, supra, at pp. 449-450.

30. 168 Mont. 470, 543 P.2d 1317 (1975).

31. 168 Mont. 433, 543 P.2d 1323 (1975).

32. Ibid., p. 442.

33. Ibid., pp. 442-443.

34. Ibid., p. 444.

35. Legislative Finance Committee, supra, at p. 480.

36. Ibid., p. 477.



Lump Sum Appropriation

- Began in present form with FY 1996 budget
- Biennial appropriation
- Programs included in Lump
 - Board of Regents
 - Office of the Commissioner of Higher Education
 - MUS Educational Units
 - Student Assistance
 - Guaranteed Student Loan Program
 - Other OCHE state level programs
- Programs NOT in Lump
 - Community College Assistance
 - Tribal College Assistance
 - Agricultural Experiment Station, Extension Service, Fire Services Training School, Bureau of Mines, Forestry and Conservation Experiment Station
- Does not include capital projects



**MONTANA UNIVERSITY SYSTEM
TOTAL FUNDS EDUCATIONAL UNITS AND AGENCIES
FY 2013 ORIGINAL OPERATING BUDGET**

	Budgeted FY 2013	Percent of Total Funds
EDUCATION UNITS AND AGENCIES		
State General Fund⁽¹⁾	\$ 174,698,704	14.5%
Tuition	276,531,804	22.9%
Six Mill Statewide Levy	19,955,748	1.7%
Other	15,280,789	1.3%
Current Unrestricted General Operating Fund Total	\$ 486,467,045	40.3%
Current Restricted	286,537,545	23.7%
Current Designated	178,228,472	14.8%
Auxiliary Enterprises	123,570,393	10.2%
Loan & Endowment Funds	754,794	0.1%
Plant Funds	131,801,072	10.9%
Total All Funds Ed Units and Agencies	\$ 1,207,359,321	100.0%

Source: FY 2013 Operating Budget, Montana University System

Notes:

⁽¹⁾ Budgeted FY 2013 state general fund excludes one-time-only and statutory appropriations

Resident Undergraduate Tuition & Fees at Public Institutions in the WICHE Region

Academic Year Rates for Full-time Students (enrolled in 15 credit hours per semester or equivalent)

2-YEAR

State	Tuition and Fees				% Change		
	2012-13	2011-12	2007-08	2002-03	1-year 2011-12 to 2012-13	5-year 2007-08 to 2012-13	10-year 2002-03 to 2012-13
Alaska	4,570	4,300	3,550	2,208	6.3%	28.7%	107.0%
Arizona	2,226	2,182	1,707	1,183	2.0%	30.4%	88.2%
California	1,104	1,080	600	330	2.2%	84.0%	234.5%
Colorado	3,538	3,342	2,454	1,626	5.9%	44.2%	117.6%
Hawaii	3,101	2,981	1,944	1,323	4.0%	59.5%	134.4%
Idaho	2,711	2,519	1,989	1,497	7.6%	36.3%	81.1%
Montana	3,722	3,517	2,744	2,493	5.8%	33.3%	49.3%
Dawson CC*	3,083	3,083	2,736	1,802	0.0%	12.7%	71.1%
Flathead Valley CC*	3,730	3,657	3,080	1,922	2.0%	21.1%	94.1%
Miles CC*	3,720	3,630	3,420	1,950	2.5%	8.8%	90.8%
MSU-Billings, COT	3,747	3,710	3,592	2,915	0.8%	4.3%	28.5%
MSU-Great Falls, COT	3,077	3,069	2,982	2,493	0.3%	3.2%	23.4%
Montana Tech, COT	3,155	3,142	3,069	2,852	0.4%	2.8%	10.6%
UM Helena, COT	3,061	3,061	2,978	2,635	0.0%	2.8%	16.2%
UM Missoula, COT	3,404	3,392	3,297	2,891	0.4%	3.2%	17.7%
Nevada	2,700	2,513	1,763	1,485	7.5%	53.2%	81.8%
New Mexico	1,506	1,459	1,155	841	3.2%	30.4%	79.1%
North Dakota	3,977	3,901	3,617	2,263	2.0%	10.0%	75.8%
Oregon	4,381	4,122	3,128	2,210	6.3%	40.1%	98.2%
South Dakota	5,555	5,206	3,787	---	6.7%	46.7%	---
Utah	3,109	2,961	2,320	1,681	5.0%	34.0%	85.0%
Washington	4,235	3,814	2,879	2,007	11.0%	47.1%	111.0%
Wyoming	2,391	2,275	1,923	1,568	5.1%	24.3%	52.5%
WICHE Average	3,232	3,067	2,397	1,618	5.4%	34.8%	99.7%

*in-district

Ratio of Tuition & Fees to Median Household Income

State	2012-13	2011-12	2007-08	2002-03
Alaska	8.0%	7.5%	5.5%	4.3%
Arizona	4.6%	4.5%	3.6%	2.9%
California	2.1%	2.0%	1.1%	0.7%
Colorado	6.0%	5.7%	4.0%	3.3%
Hawaii	5.3%	5.0%	3.2%	2.6%
Idaho	5.7%	5.3%	4.2%	3.5%
Montana	8.4%	8.3%	7.3%	7.1%
Nevada	5.7%	5.3%	3.2%	3.3%
New Mexico	3.6%	3.5%	2.7%	2.4%
North Dakota	7.1%	6.9%	7.3%	5.6%
Oregon	8.5%	8.0%	6.0%	5.3%
South Dakota	11.8%	11.0%	7.3%	---
Utah	5.6%	5.3%	3.7%	3.4%
Washington	7.4%	6.7%	5.1%	4.2%
Wyoming	4.4%	4.2%	3.6%	3.7%
WICHE Average	6.3%	6.0%	4.5%	3.7%

Note: WICHE averages are calculated as a simple average of the 15 member states (i.e. an average of state rates, not individual institutional rates); 2011 median household incomes were used for 2012-13 and 2011-12

Source: Western Interstate Commission for Higher Education, *Tuition and Fees in Public Higher Education in the West*. U.S. Census Bureau, *Table H-8: Median household income by state: 1984 to 2011*.

Resident Undergraduate Tuition & Fees at Public Institutions in the WICHE Region

Academic Year Rates for Full-time Students (enrolled in 15 credit hours per semester or equivalent)

4-YEAR (MA/BA)

State	Tuition and Fees				% Change		
	2012-13	2011-12	2007-08	2002-03	1-year 2011-12 to 2012-13	5-year 2007-08 to 2012-13	10-year 2002-03 to 2012-13
Alaska	5,733	5,388	4,624	3,010	6.4%	24.0%	90.5%
Arizona	---	---	---	---	---	---	---
California	6,617	6,517	3,517	1,991	1.5%	88.1%	232.3%
Colorado	6,727	6,104	4,104	2,672	10.2%	63.9%	151.8%
Hawaii	5,893	5,545	3,451	2,214	6.3%	70.8%	166.2%
Idaho	5,723	5,457	4,251	2,918	4.9%	34.6%	96.1%
Montana	5,268	5,058	4,707	3,601	4.1%	14.9%	46.3%
MSU Billings	5,711	5,470	5,132	3,974	4.4%	11.3%	43.7%
MSU Northern*	4,817	4,643	4,356	3,315	3.7%	10.6%	45.3%
MT Tech*	6,495	6,175	5,682	4,085	4.2%	13.3%	57.5%
UM Western*	4,109	3,945	3,659	3,031	4.2%	12.3%	35.6%
Nevada	4,313	4,005	2,693	1,980	7.7%	60.2%	117.8%
New Mexico	4,174	3,911	3,043	2,059	6.7%	37.2%	102.7%
North Dakota	6,042	5,913	5,142	3,191	2.2%	17.5%	89.3%
Oregon	7,764	7,557	5,811	4,133	2.7%	33.6%	87.8%
South Dakota	7,513	7,177	5,588	3,949	4.7%	34.4%	90.2%
Utah	4,805	4,544	3,429	2,146	5.7%	40.1%	123.9%
Washington	8,535	7,615	5,197	3,463	12.1%	64.2%	146.5%
Wyoming	---	---	---	---	---	---	---
WICHE Average	6,085	5,753	4,274	2,871	5.8%	42.4%	111.9%

*lower division rate

Ratio of Tuition & Fees to Median Household Income

State	2012-13	2011-12	2007-08	2002-03
Alaska	10.0%	9.4%	7.2%	5.8%
Arizona	---	---	---	---
California	12.4%	12.2%	6.2%	4.0%
Colorado	11.5%	10.4%	6.7%	5.3%
Hawaii	10.0%	9.4%	5.6%	4.3%
Idaho	12.1%	11.5%	9.0%	6.9%
Montana	13.3%	12.6%	10.4%	10.6%
Nevada	9.2%	8.5%	4.9%	---
New Mexico	9.9%	9.3%	7.2%	5.9%
North Dakota	10.7%	10.5%	10.4%	7.9%
Oregon	15.1%	14.7%	11.2%	9.9%
South Dakota	15.9%	15.2%	10.8%	10.0%
Utah	8.7%	8.2%	5.5%	4.4%
Washington	15.0%	13.4%	9.2%	7.3%
Wyoming	---	---	---	---
WICHE Average	11.8%	11.2%	8.1%	6.9%

Note: WICHE averages are calculated as a simple average of the 15 member states (i.e. an average of state rates, not individual institutional rates); 2011 median household incomes were used for 2012-13 and 2011-12

Source: Western Interstate Commission for Higher Education, *Tuition and Fees in Public Higher Education in the West*. U.S. Census Bureau, *Table H-8: Median household income by state: 1984 to 2011*.



Resident Undergraduate Tuition & Fees at Public Institutions in the WICHE Region

Academic Year Rates for Full-time Students (enrolled in 15 credit hours per semester or equivalent)

DOCTORAL GRANTING

State	Tuition and Fees				% Change		
	2012-13	2011-12	2007-08	2002-03	1-year	5-year	10-year
					2011-12 to 2012-13	2007-08 to 2012-13	2002-03 to 2012-13
Alaska	5,898	5,568	4,736	3,597	5.9%	24.5%	64.0%
Arizona	9,693	9,601	4,876	2,583	1.0%	98.8%	275.3%
California	12,548	12,529	7,093	3,668	0.1%	76.9%	242.1%
Colorado	8,495	7,898	5,647	3,307	7.6%	50.4%	156.9%
Hawaii	9,404	9,100	5,391	3,349	3.3%	74.4%	180.8%
Idaho	6,141	5,826	4,405	3,090	5.4%	39.4%	98.7%
Montana	6,338	6,075	5,445	3,906	4.2%	36.4%	58.4%
Montana State University	6,705	6,428	5,749	3,959	4.3%	16.6%	69.4%
University of Montana*	5,973	5,722	5,141	4,033	4.4%	16.2%	48.1%
Nevada	6,594	6,240	4,055	2,490	5.7%	62.6%	164.8%
New Mexico	6,045	5,818	4,512	3,192	3.9%	34.0%	89.4%
North Dakota	7,244	7,134	6,053	3,584	1.5%	19.7%	102.1%
Oregon	8,367	8,099	5,948	4,545	3.3%	40.7%	84.1%
South Dakota	7,554	7,048	5,383	3,853	7.2%	40.3%	96.1%
Utah	6,554	6,181	4,593	3,112	6.0%	42.7%	110.6%
Washington	12,229	10,662	6,626	4,543	14.7%	84.6%	169.2%
Wyoming	4,278	4,125	3,554	2,997	3.7%	20.4%	42.7%
WICHE Average	7,825	7,460	5,221	3,460	4.9%	49.9%	126.1%

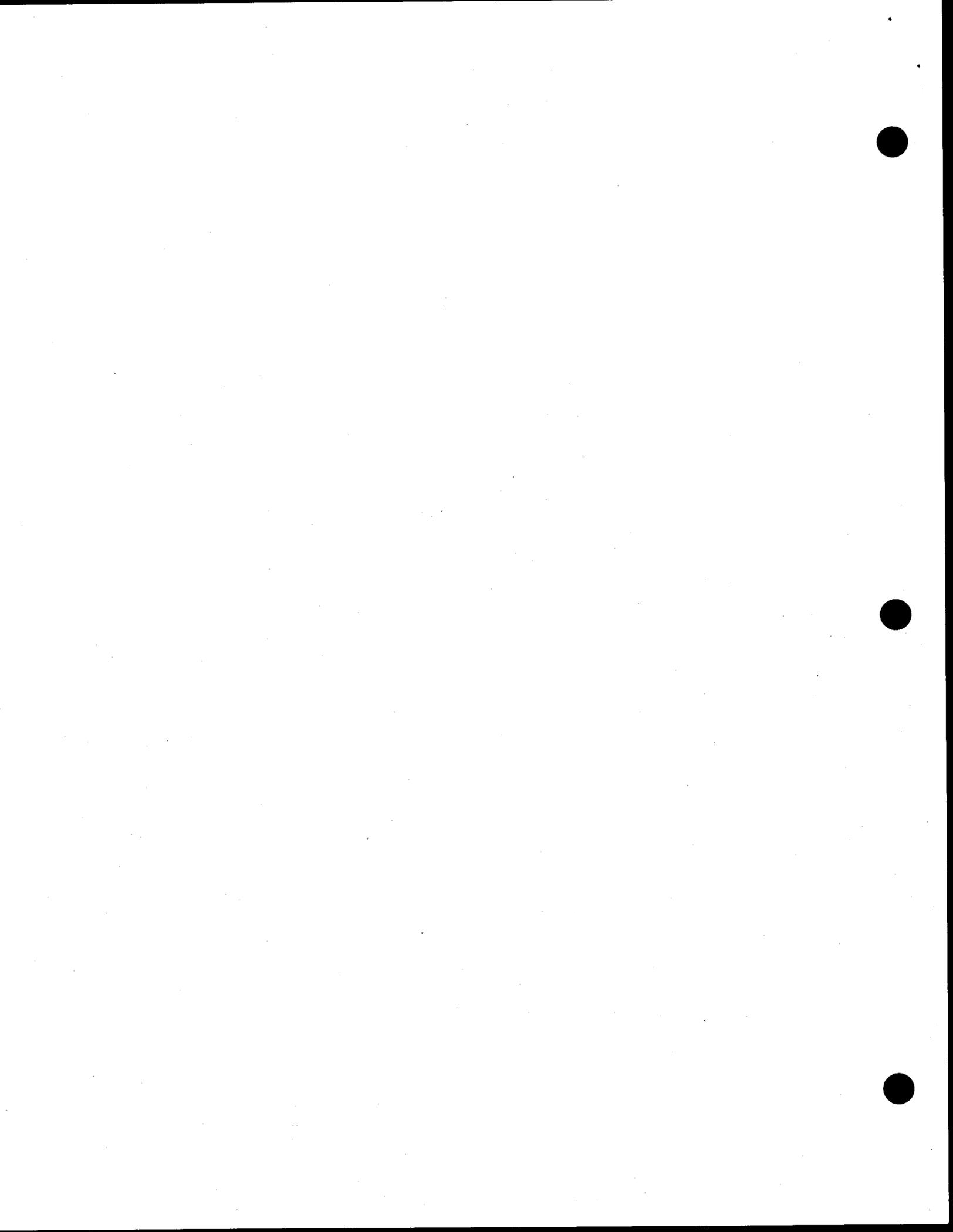
*lower division rate

Ratio of Tuition & Fees to Median Household Income

State	2012-13	2011-12	2007-08	2002-03
Alaska	10.3%	9.7%	7.4%	6.9%
Arizona	19.9%	19.7%	10.4%	6.3%
California	23.5%	23.5%	12.4%	7.4%
Colorado	14.5%	13.5%	9.3%	6.6%
Hawaii	15.9%	15.4%	8.8%	6.5%
Idaho	12.9%	12.3%	9.3%	7.3%
Nevada	14.3%	13.7%	10.5%	8.8%
New Mexico	14.2%	13.6%	12.2%	11.5%
North Dakota	11.7%	11.1%	8.2%	6.2%
Oregon	11.7%	11.3%	8.7%	7.7%
South Dakota	15.3%	15.1%	11.7%	9.1%
Utah	15.1%	14.6%	9.5%	9.2%
Washington	13.3%	12.4%	9.5%	8.1%
Wyoming	12.0%	11.3%	8.6%	7.3%
WICHE Average	14.7%	14.2%	9.9%	8.0%

Note: WICHE averages are calculated as a simple average of the 15 member states (i.e. an average of state rates, not individual institutional rates); 2011 median household incomes were used for 2012-13 and 2011-12

Source: Western Interstate Commission for Higher Education, *Tuition and Fees in Public Higher Education in the West*. U.S. Census Bureau, *Table H-8: Median household income by state: 1984 to 2011*.



FINAL 11/30/12

**HISTORICAL FUNDING - EDUCATIONAL UNITS ONLY
MONTANA UNIVERSITY SYSTEM (MUS)
FISCAL YEARS 1988 - 2013 (26 Years of History)**

BUDGETED REVENUE BY SOURCE, BY FISCAL YEAR

Revenue Source	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
GENERAL FUND ⁽¹⁾	79,224,801	78,394,914	84,051,010	91,125,964	106,843,252	96,418,127	91,575,775	84,320,589	83,648,540	87,966,179	87,464,402	89,087,185	94,922,977	95,844,703	104,849,450	101,347,323
TUITION	28,774,984	28,773,909	32,862,875	34,126,897	36,363,050	48,575,393	56,747,054	68,346,098	81,440,201	89,719,958	100,240,444	109,576,801	108,577,974	112,934,296	120,897,552	147,022,505
SIX-MILL LEVY	12,864,200	13,714,294	12,837,000	12,817,999	12,852,005	14,644,261	12,518,000	14,807,000	15,079,000	13,840,000	13,864,000	14,319,118	14,809,000	15,280,000	11,868,912	12,036,912
OTHER	3,616,136	4,291,643	2,814,464	1,281,955	624,082	630,350	805,686	699,409	764,437	731,686	2,448,961	3,134,954	2,313,795	2,504,907	3,002,673	2,970,384
TOTAL	124,480,121	125,174,760	132,565,349	139,352,815	156,682,389	160,268,131	161,646,715	168,173,096	180,932,178	192,257,823	204,017,707	216,118,058	220,623,746	226,563,906	240,618,587	263,377,124
STATE SUPPORT (General Fund + Six-Mill)	92,089,001	92,109,208	96,888,010	103,943,963	119,695,257	111,062,388	104,093,775	99,127,589	98,727,540	101,806,179	101,328,402	103,406,303	109,731,977	111,124,703	116,718,362	113,384,235
Budgeted Resident FTE Students ⁽²⁾									24,759	25,418	24,477	24,898	24,622	24,871	25,004	25,207
State Support Per Budgeted Resident FTE									3,988	4,005	4,140	4,153	4,457	4,468	4,668	4,498
STATE SUPPORT AS % OF TOTAL	74.0%	73.6%	73.1%	74.6%	76.4%	69.3%	64.4%	58.9%	54.6%	53.0%	49.7%	47.8%	49.2%	49.0%	48.5%	43.1%
Actual Resident FTE Students-Info Only									23,557	24,020	24,323	24,436	24,605	24,851	25,565	26,226

Note: This worksheet includes ongoing funding only; one-time-only funding is excluded

Sources: BOR Operating Budgets (Summary of Funding) FY 1988 - 1995
 OCHE Submission to Legislative Audit Division (Cost of Education Historical Summary) FY 1996-2006
 2007 - Board of Regents 2007 Biennial Budget Plan (projected)
 2008 & 2009 - HB 13, HB 2 (MBARS), HB 63, HB 131 and MUS FY 2008 and FY 2009 Operating Budgets
 2010 & 2011 - HB 2, HB 13, HB 645 State Fiscal Stabilization Funds/ARRA, ORP Statutory Appropriation, and MUS FY 2010 and FY 2011 Operating Budgets
 2012 & 2013 - HB 2, ORP Statutory Appropriation, and MUS FY 2012 and FY 2013 Operating Budgets
 Budgeted Resident FTE Students (LFD Biennial Fiscal Report)

Footnotes:

- 1) 2010 and 2011 general fund includes federal State Fiscal Stabilization Funds from the American Recovery and Reinvestment Act of 2009 (\$30.95M in FY 10 and \$28.57M in FY 11)
- 2) 2010 and 2011 general fund reflects Governor's 17-7-140 reductions (\$1.34M in FY 10 and \$1.35M in FY 11)
- 3) Reflects Resident FTE student enrollment estimate used by the legislature to set the appropriation. "N/A" indicates student enrollment was not a factor used to establish the appropriation.



FINAL 11/30/12

**HISTORICAL FUNDING
MONTANA UNIVERSITY :
FISCAL YEARS 1988 - 2013 :**

Revenue Source	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	Average Annual Percentage Change
GENERAL FUND ⁽¹⁾	107,186,837	101,381,233	111,395,004	112,552,060	125,093,960	138,977,163	133,629,465	131,434,006	133,316,017	132,441,183	2.1%
TUITION	158,086,393	172,721,055	188,215,743	200,726,725	204,832,437	208,516,914	218,155,115	236,364,336	258,695,557	276,531,804	9.5%
SIX-MILL LEVY	12,235,000	12,362,999	13,385,001	13,679,000	17,565,323	16,369,436	18,318,027	17,018,698	18,508,238	19,955,748	1.8%
OTHER	5,946,357	6,355,565	2,558,151	3,745,448	4,138,541	3,681,286	2,915,765	4,572,464	9,895,996	15,280,789	5.9%
TOTAL	283,454,587	292,820,852	315,553,399	330,503,233	351,630,261	367,544,799	373,018,372	389,389,504	420,415,808	444,209,524	5.2%
STATE SUPPORT (General Fund + Six-Mill)	119,421,837	113,744,232	124,780,005	126,231,060	142,659,283	155,346,599	151,947,492	148,452,704	151,824,255	152,396,931	2.0%
Budgeted Resident FTE Students ⁽²⁾	N/A	N/A	26,942	27,175	26,756	26,756	N/A	N/A	N/A	N/A	
State Support Per Budgeted Resident FTE			4,631	4,645	5,332	5,806					
STATE SUPPORT AS % OF TOTAL	42.1%	38.8%	39.5%	38.2%	40.6%	42.3%	40.7%	38.1%	36.1%	34.3%	-3.0%
Actual Resident FTE Students-Info Only	26,828	26,321	26,422	26,298	26,279	26,740	28,398	29,730	29,602		

Note: This worksheet includes only
Sources: BOR Operating Budgets (Sum
OCHE Submission to Legislative Audit D
2007 - Board of Regents 2007 Biennium
2008 & 2009 - HB 13, HB 2 (MBARS), H
2010 & 2011 - HB 2, HB 13, HB 845 St
2012 & 2013 - HB 2, ORP Statutory Api
Budgeted Resident FTE Students (LFD I

Footnotes:

- 1) 2010 and 2011 general fund includes
- 2) 2010 and 2011 general fund reflects
- 3) Reflects Resident FTE student enroll

Fiscal Year Enrollment - Summary Report

FY02 - FY12 Annualized Student FTE

SUMMARY REPORT

MUS INSTITUTIONS	FY02	FY03	FY04	FY05	FY06	FY07	FY08	FY09	FY10	FY11	FY12	% CHG 11 to 12	% CHG 02 to 12
4-year Institutions													
MSU Bozeman	10,444	10,674	10,665	10,528	10,642	10,555	10,467	10,509	10,876	11,540	12,019	4.2%	15.1%
MSU Billings	3,409	3,382	3,502	3,484	3,552	3,434	3,448	3,384	3,286	3,503	3,463	-1.1%	1.6%
MSU Northern	1,489	1,446	1,431	1,319	1,255	1,207	1,096	1,075	1,118	1,155	1,125	-2.7%	-24.5%
MSU 4-year sub-Total	15,342	15,503	15,599	15,330	15,449	15,197	15,010	14,968	15,280	16,199	16,607	2.5%	8.2%
UM Missoula	10,830	10,933	11,118	11,032	10,963	11,042	11,160	11,360	11,717	12,136	11,874	-2.2%	9.6%
Montana Tech	1,608	1,751	1,797	1,692	1,679	1,784	1,791	1,889	2,109	2,238	2,131	-4.8%	32.5%
UM Western	1,014	997	1,006	1,069	1,090	1,117	1,110	1,133	1,255	1,361	1,366	0.3%	34.7%
UM 4-year sub-Total	13,453	13,682	13,922	13,792	13,732	13,944	14,062	14,383	15,082	15,736	15,371	-2.3%	14.3%
4-year Total	28,794	29,184	29,520	29,123	29,181	29,140	29,072	29,350	30,362	31,934	31,978	0.1%	11.1%
Colleges of Technology													
MSU Billings COT	510	580	660	667	668	699	706	658	973	1,053	1,015	-3.6%	99.1%
MSU Great Falls COT	952	1,053	1,098	1,080	1,082	1,070	1,025	1,154	1,318	1,415	1,465	3.5%	53.8%
MSU Gallatin College Programs	-	-	-	13	104	142	188	199	229	280	333	18.8%	-
MSU COT sub-Total	1,462	1,633	1,759	1,760	1,854	1,911	1,919	2,010	2,520	2,747	2,812	2.4%	92.4%
UM Helena COT	736	738	749	684	733	719	734	806	1,007	1,147	1,181	3.0%	60.5%
UM Missoula COT	802	886	896	917	1,019	1,098	1,276	1,423	1,629	1,781	1,769	-0.7%	120.7%
Montana Tech COT	295	232	260	280	303	304	349	331	382	376	388	3.3%	31.5%
UM COT sub-Total	1,832	1,857	1,904	1,881	2,056	2,121	2,358	2,560	3,018	3,303	3,338	1.0%	82.2%
COT Total	3,294	3,489	3,663	3,641	3,910	4,033	4,277	4,570	5,538	6,051	6,150	1.6%	86.7%
Community Colleges													
Dawson Community College	445	415	450	497	500	401	401	451	449	419	365	-12.8%	-18.0%
Flathead Valley Community College	1,289	1,414	1,642	1,457	1,369	1,265	1,360	1,557	2,076	2,105	1,920	-8.8%	49.0%
Miles Community College	509	473	509	542	469	454	446	459	486	453	433	-4.3%	-15.0%
Community College Total	2,243	2,302	2,601	2,496	2,338	2,119	2,206	2,468	3,010	2,976	2,718	-8.7%	21.2%
System Total	34,332	34,975	35,785	35,259	35,429	35,293	35,556	36,388	38,909	40,961	40,847	-0.3%	19.0%

Notes:

- 1) Figures may not total due to rounding
- 2) Official enrollment counts are recorded on the 15th day of instruction of each semester. Institutions are able to amend this figure by adding late starting course enrollment at the end of the semester.

2007

CAP

● EXAMPLE

Governor Brian Schweitzer's
College Affordability Plan
to the
Board of Regents

Governor Schweitzer presents the following College Affordability Plan (CAP) to provide the university system funding for the 2009 biennium that results in a zero tuition increase for Montana resident students for Montana's public institutions of higher education for the 2009 biennium. This represents a commitment of approximately \$50 million in new funding for Montana Higher Education. This amount is in addition to monies for new building projects, deferred maintenance and full funding of the Governor's "Best and Brightest" post-secondary scholarships.

Governor Schweitzer will support in his budget and throughout the legislative session the funding described in this plan if the Regents agree not to raise tuition in the 2009 biennium. If the electorate should pass and the court upholds CI-97, the Governor cannot commit to this plan.

In return for his support and commitment in his budget, the Governor expects in return that the Regents will support in their budgets and throughout the legislative session the funding described in this plan and if the Legislature adopts the funding set forth in this agreement, the Regents agree not to increase resident student tuition in the 2009 biennium.

Additions to the Base

The Montana University System budget spreadsheet version 14 establishes a base (the Base) and the addition to the base for the 2009 biennium that has been agreed to by both the Governor's budget office and the Board of Regents senior fiscal staff necessary for a zero tuition increase, along with other parts of the plan as presented below.

The following table shows the new base from the original Base of \$310,841,173, agreed to by the Governor's budget office and the Regents senior fiscal staff, but does not include other component to the plan such as pay or retirement issues, which are further addressed.

Campus	FY 2008	FY 2009
UM-Missoula	\$ 123,098,242	\$ 124,844,606
MT Tech	22,007,335	22,472,845
UM-Western	10,258,480	10,328,493
UM-HCOT	5,186,567	5,259,317
MSU-Bozeman	120,600,761	121,995,372
MSU-Billings	36,177,655	36,553,467
MSU-Northern	13,022,691	13,290,481
MSU-GFCOT	8,991,145	9,162,038
Totals	\$ 339,342,876	\$ 343,906,619

Resident Student Share

The resident share of new budget items is 79.8% and the non-resident share is 20.2%. This share is based upon student residency (FTEs) in the FY 2007.

The resident shares by campus are on the right:

Campus	Resident student share
UM-Missoula	73.7%
MT Tech	84.2%
UM-Western	83.7%
UM-HCOT	98.4%
MSU-Bozeman	76.2%
MSU-Billings	91.0%
MSU-Northern	89.8%
MSU-GFCOT	98.3%
System Average	79.8%

Western Undergraduate Exchange (WUE) Share of Adjustments to Base

WUE is the Western Undergraduate Exchange, a program of the Western Interstate Commission for Higher Education (WICHE). Through WUE, students in 15 western states may enroll in many two-year and four-year college programs at a reduced tuition level -- 150 percent of the institution's regular resident tuition. Since no resident tuition increase will

occur under this proposal, the WUE tuition will also not increase due to the compact with other states. As a result of this, for this biennium only, the state will support the base adjustments associated with WUE students. The share of WUE students by campus is as follows:

Campus	WUE student share
UM-Missoula	5.3%
MT Tech	6.4%
UM-Western	12.0%
UM-HCOT	0.8%
MSU-Bozeman	3.7%
MSU-Billings	5.8%
MSU-Northern	6.3%
MSU-GFCOT	0.1%
System Average	4.9%

In the Fall of 2005, 1,337 Montana residents took advantage of a WUE scholarship outside of Montana, while 1,670 non-Montana residents came to MUS campuses on a WUE scholarship. Thus, there is an imbalance of approximately 300 non-resident students gaining access to WUE slots at Montana campuses. We understand that the Regents will be working toward a balance between the Montana students out of state and the WUE students in Montana.

Resident Share and WUE Computation for Additions to Base

The Resident Share of adjustments to base items takes into account FY 2007 budgeted tuition levels and then funds the increase with the resident and WUE student shares shown above. The resident student share of the base adjustments increases is to **\$10,091,962** in FY 2008 and **\$14,060,142** in FY 2009 excluding the High School Honors program. The High School Honors Program is addressed later.

Resident student share of increased costs without High School Honors Program:

Campus	FY 2008	FY 2009
UM-Missoula	\$ 3,391,646	\$ 4,955,085
MT Tech	588,047	1,009,689
UM-Western	629,780	674,519
UM-HCOT	193,726	265,889
MSU-Bozeman	2,900,065	3,972,250
MSU-Billings	1,616,930	1,980,849
MSU-Northern	293,483	550,796
MSU-GFCOT	478,285	651,065
Totals	\$ 10,091,962	\$ 14,060,142

Enrollment

The enrollment used for each year of the 2009 biennium is assumed to be the FY 2007 resident enrollment projections contained in the Montana University System budget spreadsheet version 14. Resident enrollment is assumed to be "flat lined" or to remain constant. State provided funding will not be increased or decreased as the result of actual resident enrollments being higher or lower than this level as outlined in 17-7-142, MCA.

Resident Students	
FY 2006	26,422
FY 2007	26,756
FY 2008	26,756
FY 2009	26,756

Faculty Termination Pay Costs:

The Governor recognizes the possibility of high termination payout costs as many University employees, like state employees, are eligible for retirement. In order to fund the Montana University System retirement costs, the state will participate in expenses that exceed the budgeted level of faculty termination payouts. The level of state support for the termination payouts above the budgeted level will be as follows: Bozeman, Missoula, Billings, and Butte will share costs with the state personal services contingency fund at a rate of 50% state share of the amount above the base level and Havre, Dillon, Great Falls, Helena, all stations and agencies will share costs with the state personal services contingency fund at a rate of 60% state share of the amount above the base level.

Campus	FY06 Actual
UM-Missoula	970,795
MT Tech	112,303
UM-Western	20,252
HCOT	-
MSU-Bozeman	755,006
MSU-Billings	206,187
MSU-Northern	76,022
GFCOT	23,803
Total	2,164,368

Pay Plan

The pay plan for the current unrestricted portion of the educational units of the Montana University System will be funded by the state to cover the resident student share or 79.8% of the cost, plus the WUE student share or 4.9% of the cost.

The pay plan is assumed to be "bifurcated" meaning the largest portion of the pay plan will be a base level and a smaller portion will be pooled and available for merit, market and promotion pay increases.

Actuarial funding of the Retirement Systems

The actuarial funding of the retirement systems for the current unrestricted portion of the educational units of the Montana University System will be funded with the resident student share of 79.8%, plus the WUE student share or 4.9% of the cost. This will apply to both PERS and TRS system retirement bills during the 2009 legislative session.

High School Honors Fee Waivers

The Governor supports restructuring the High School Honors Fee Waivers. The budget will contain a one-time only contribution for this restructuring process could be \$850,000 in FY 2008 and \$450,000 in FY 2009. These numbers represent the 100% University System incremental request for FY 2008 and 50% of the University System request for FY 2009 due to the phase down beginning in FY 2009.

Northern RIT Funding

Northern RIT funding is assumed to remain funded with RIT at \$240,000 per year.

No Shifting of Costs to Fees

The Regents must commit to not increasing fees beyond what would be required for the normal programs that fees support. The Montana University System campuses will not shift costs from current unrestricted funding to fee supported programs.

Summary Table of Resident and WUE Student Share and State Support

Item	State Share	FY 2008	FY 2009
Present Law Base - Residents	79.8%	\$ 9,508,129	\$ 13,246,745
Present Law Base - WUE	4.9%	583,833	813,397
Actuarial funding - Residents	79.8%	TBD	TBD
Actuarial funding - WUE	4.9%	TBD	TBD
Pay plan - Residents	79.8%	TBD	TBD
Pay plan - WUE	4.9%	TBD	TBD
Tentative Honors Fee Waivers OTO	100%	850,000	450,000
Total		\$ 10,941,962	\$ 14,510,142