MONTANA LEGISLATIVE BRANCH

Legislative Fiscal Division

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Director
AMY CARLSON

DATE: June 2, 2010

TO: Legislative Finance Committee

FROM: Amy Carlson, Legislative Fiscal Analyst

RE: SJ 9 – Student Loan Study

The purpose of this memo is to recommend to the Legislative Finance Committee (LFC) that no additional staff time or resources be dedicated to SJ 9 – the Student Loan Study for the remainder of the biennium. As discussed below, two of the primary study questions expressed by the LFC have been addressed over the last several months, and a change in federal student loan policy will significantly change the role of the Montana Higher Education Student Assistance Corporation (MHESAC) in the future. Also, the state's fiscal condition and the concurrent role and responsibilities of Legislative Fiscal Division staff to assist the legislature in emergent fiscal issues have shifted the focus of staff time and resources away from SJ 9 to broader and more urgent issues in preparation for the 2011 Legislature.

BACKGROUND

SJ 9, the Student Loan Study, arose from legislative concerns surrounding MHESAC that surfaced in 2007-2008. While the availability and amount of all sources of financial aid to Montana students was also included in SJ 9 and was selected by the LFC as one of the topics to include in the study, the primary area of interest for the study expressed by the LFC was MHESAC and two areas of concern:

1) The state's obligation for MHESAC bonds in the event of nonperformance
2) Its corporate governance and relationship to the Board of Regents

MHESAC AND THE STUDENT LOAN PROGRAM

MHESAC was incorporated in 1980 as a private non-profit corporation for the purpose of generating capital via federally authorized, state-allocated, tax-exempt bond financing to provide a secondary market for banks making student loans in Montana under the Federal Family Education Loan Program (FFELP). Although MHESAC has transformed itself over the years in response to business conditions and opportunities, it still has access to the tax exempt bond financing, which it has continued to use to generate capital for student loan financing. One concern raised by the Legislative Finance Committee in 2007-2008 was, given the credit market problems of 2007 and 2008, whether student loan funds for Montana students would continue to be available. MHESAC did meet the capital needs for student loans for both FY 2009 and FY 2010 from financing it had raised prior to the credit market problems of 2007 and 2008.

Federal Student Loan Policy Reform

The Health Care and Education Affordability Reconciliation Act of 2010 (HR 4872) recently passed by Congress eliminates the FFELP effective June 30, 2010 which essentially leaves the William D. Ford Federal Direct Loan (DL) Program as the only public student loan provider for postsecondary students. The federal government will provide the capital for the student loans, eliminating the need for MHESAC to raise capital for new student loans. All of the educational units of the Montana University System and the state's community colleges are prepared for the conversion from the FFELP program to the DL program effective July 1, 2010.

STATE LIABILITY

At the September 2009 meeting, the LFC framed the question of state liability indirectly as "What has happened in other states?" rather than directly as "Would the State of Montana be liable to repay MHESAC bonds if MHESAC was unable to meet its bond obligations?" Following the September 2009 LFC meeting, the LFD requested LSD legal staff to conduct a legal survey or analysis to identify if any other states that have a private, non-profit entity using state bond volume cap had been held financially liable if the private, non-profit entity either defaulted on bond payments or been sued by bond holders for nonperformance. While legal staff did not discover any instance of state liability, he couched his remarks by indicating it was difficult and time consuming to identify other states with a similar constitutional, organizational, and governance structure for issuing bonds for student loans and consequently any findings of state liability may or may not have precedential value for Montana.

MHESAC AND BOARD OF REGENTS

At the June 2008 LFC meeting, some concern was expressed by members about the "close" relationship of the Board of Regents and the MHESAC corporate board. Within the last eighteen months, the articles of incorporation and bylaws for MHESAC have been changed from the Board of Regents (BOR) chairman appointing all 7 Directors (3 BOR, 4 At-Large) to 2 BOR Directors (the BOR Chair, or proxy, and 1 BOR member appointed by the BOR Chair) and 5 At-Large Directors nominated by the MHESAC Board Committee and then appointed by the BOR Chair. The BOR Chair has appointed a proxy. The Commissioner of Higher Education remains an ex-officio, non-voting member.

LFD WORK PLAN RECOMMENDATION

In addition to the above factors relating to MHESAC and to the federal student loan program, the state's fiscal condition and the concurrent role and responsibilities of Legislative Fiscal Division staff to assist the legislature in emergent fiscal issues have shifted the focus of staff time and resources away from SJ 9 to broader and more urgent issues in preparation for the 2011 Legislature. Staff expects to continue to focus upon emergent fiscal issues for the next several months and the analysis of the proposed executive budget during fall 2010.

Because of the factors noted above, the LFD recommends that no additional staff time or resources be dedicated to the SJ 9 study for the remainder of the biennium. The LFC may want to reevaluate the need for the SJ 9 study during the 2013 biennium interim.