



# MONTANA UNIVERSITY SYSTEM

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## Montana Board of Regents Conference Call Meeting

April 29, 2008

The meeting convened at 2:10 PM.

Roll Call indicated a quorum present.

**Regents Present:** Lynn Morrison-Hamilton, Chair, Todd Buchanan, Clayton Christian, Janine Pease, Kerra Melvin, Stephen Barrett, Vice Chair, Lila Taylor, all by phone, and Sheila Stearns *ex officio* in person. Governor Schweitzer *ex officio* and Linda McCulloch *ex officio* all excused.

**Others Present by Phone:** Present at the Commissioner's Office were Mick Robinson, Cathy Swift, Tyler Trevor, Bruce Marks, Ron Muffick, and Lynette Brown of OCHE and the Montana Guaranteed Student Loan Program; Jan Lombardi and David Ewer of the governor's office; Alan Peura of Legislative Services; Jim Stipcich of Student Assistance Foundation; Chuck Johnson of Lee Newspapers State Bureau; Craig Roloff, Laura Humberger and Bob Snyder of MSU-Bozeman; Steve Clark and Ann Gifford of Wachovia; Ron Sexton and Dan Carter of MSU-Billings; Bob Durringer, Jim Foley and Royce Engstrom all of UM-Missoula; and Mary Ellen Baukol of MSU-Great Falls COT.

### ACTION

- a. Authorization to Amend its Bond Indenture; Montana State University **ITEM 139-101-C0408**

Craig Roloff, Vice President for Administration and Finance at MSU-Bozeman, explained this is a request for authority to modify the existing bond indenture of the Series J bonds and that it is not requesting authority to sell bonds. The intent is to remarket the Series J bonds as variable rate bonds. This will be advantageous to MSU.

- b. Authorization to Proceed with the Issuance of Series L 2008 Facilities Revenue Bonds to Refund Previously Issued Series G Revenue Bonds; Montana State University **ITEM 139-102-C0408**

Mr. Roloff noted that this item will authorize MSU to sell new bonds, Series L, in order to refund the Series G bonds. The Series L bonds will have a fixed rate that will keep them within the original financial target.

Mick Robinson, Associate Commissioner of Fiscal Affairs at OCHE, recommended moving forward with both action items.

Regent Taylor moved passage of both items.

Public Comment: None

The motion passed unanimously, 7-0.

## **DISCUSSION**

### Student Assistance Foundation Resolution

Regent Barrett stated he supports the resolution recently passed by SAF but that he also recommends passage of a Board of Regents (BOR) resolution to set further parameters on the issue of student loan financing. He noted he had sent a draft resolution to the regents and others shortly before the meeting began.

Following discussion about the wording of the proposed BOR resolution, Regent Barrett ultimately moved passage of his draft resolution with the following changes: (1) in the first "Whereas," page 1, insert "Montana Guaranteed Student Loan Program;" and (2) on page 2, top of page, replace the word "adopted" with the word "accepted."

Regent Barrett explained his proposed resolution.

Public Comment:

Jim Stipcich, President of the Student Assistance Foundation (SAF) stated that the language in the 4<sup>th</sup> "Whereas" would be more accurate if it stated that the state had historically provided 26% in carry-forward amounts. He also stated that SAF and the Montana Higher Education Student Assistance Corporation (MHESAC) would like to reserve the right to respond to the legislative delegation themselves as well.

Mr. Robinson asked if it was Regent Barrett's intention that the term "Montana Guaranteed Student Loan Program" be included in all the places where the resolution references the student loan program. Regent Barrett agreed and suggested that those changes be made, except where the context indicates otherwise, by staff.

Commissioner Stearns clarified with Regent Barrett that he was comfortable with the wording concerns mentioned and Regent Barrett confirmed that he was.

Regent Buchanan stated that he hadn't seen any formal response from MHESAC or SAF and asked if there had been a response. Mr. Stipcich replied that MHESAC reviewed the recommendations by the task force and would suggest changes back to the BOR. He clarified that many of the recommended changes have already been made or are in the process of being made. He noted that MHESAC planned to finalize its responses at its (MHESAC's) June meeting.

Regent Buchanan asked about the proposed open meeting legislation and about support for legislation to require that MHESAC be subject to the open meeting laws. Regent Barrett replied that since legislation has not yet been drafted, we have no idea what form it will take and he intended for the resolution to be carefully worded in this respect. He hasn't seen a draft of actual legislation and the regents would have to review the legislation before deciding to support it.

Regent Buchanan agreed with Regent Barrett, but said the intent of the legislation was very clear and strongly encouraged the BOR to include the open meetings component. He was not ready to make a motion on this now. He then requested clarification of what the BOR was suggesting to Congress and whether it was that Congress be the default buyer in the auction rate market. Mr. Stipcich responded that was not correct: the SAF Resolution asks the Secretary of Education to act as the stand-by loan purchaser for new loans made after October, 2007. He said this suggested action has nothing to do with existing auction bonds for current loans going forward. Mr. Stipcich advised that the House has adopted a bill that would allow the Secretary of Education to purchase new loans, thereby ensuring liquidity in the market place. He said the Senate also has a bill in progress which has not been acted upon but which would provide liquidity too.

Regent Hamilton asked who used to provide the stand-by liquidity for student loans. Mr. Stipcich said it depends: years ago it was by private lenders, then by letters of credit by commercial banks. In the mid 80's, banks did not have high enough ratings to provide this service, so foreign banks stepped in. As auction bonds came into being, that stand-by liquidity wasn't necessary. Investment banks that acted like broker-dealers often stepped in and purchased bonds. Sallie Mae was created as a government enterprise to ensure liquidity was available in the student loan market and was formerly the primary lender. Sallie Mae is no longer in the business of providing these loans.

Regent Christian stated that he shared Regent Buchanan's concerns about not hearing back from SAF and MHESAC about task force recommendations relayed in March. He asked whether the boards (MHESAC and SAF) will continue to act along the guidelines of the resolution. Mr. Stipcich responded that was the intent of the MHESAC board.

Regent Buchanan asked if the BOR should wait to act on the resolution until it hears back from SAF and MHESAC on the task force recommendations. Regent Barrett responded that there is a tremendous timing issue and that the questions raised by MHESAC and SAF with regard to the task force recommendations were not significant. He stated the BOR needs to act now as these issues affect our long range fiscal stability. Mr. Stipcich responded they are under time constraints with Congress and foresee federal legislation in the next 5-7 days to try to address this issue. Regent Christian realized the time sensitivity but expressed frustration that the same attention had not been given to the recommendations of the task force.

Cathy Swift, legal counsel, stated that Commissioner Stearns did send the recommendations of the task force to the MHESAC board and that letter indicated that

we would work with the MHESAC board at their convenience. Ms. Swift said the two boards (MHESAC and SAF) had discussed the recommendations at their meetings in April and there had not been any intentional delay by either the MHESAC or SAF boards to respond to the task force recommendations.

Ms. Swift also clarified that it was unclear by the wording in Regent Barrett's resolution what exactly is being referred to by the term "Montana Student Loan Program." The Commissioner of Higher Education has oversight and management authority, by statute, over the Montana Guaranteed Student Loan Program, but the term "student loan program" is a broader concept, including private lenders, MHESAC and SAF.

Regent Christian stated he will be disappointed if the BOR does not receive the responses before the May BOR meeting. Commissioner Stearns responded that at a recent MHESAC meeting, she understood MHESAC had appointed a committee to review the minor technical edits but expressed overall agreement with the task force recommendations. The commissioner said she believes the boards were proceeding very seriously regarding the recommendations. Mr. Robinson confirmed this. Regent Barrett agreed that there was overall agreement. Mr. Stipcich volunteered to speak to both SAF and MHESAC boards about the possibility of having a response to the BOR for the May meeting. Regent Taylor agreed.

Regent Buchanan stated he was not comfortable with Regent Barrett's resolution. Since he is not on the MHESAC and SAF boards, he is not comfortable supporting the SAF resolution. He said he keeps asking MHESAC and SAF for information and he wants to know what other options are available because he hasn't been given access to ask more questions of SAF and MHESAC. He stated that, if Jim Stipcich wants cooperation from the Board of Regents, then the Board of Regents needs to understand the issue more clearly. He is concerned because, one, the BOR has made more than one request for more information and he's reluctant to endorse the only proposal he has seen, and, two, we've been unable to get this information. He suggested a legislative audit into these questions. The BOR may have failed in not stating (to MHESAC) that this is of importance, but he will not vote for the resolution until he gets a response from MHESAC and SAF.

Mr. Stipcich clarified that SAF has called for the federal government to provide a stand-by program to provide loans. Jim Foley, UM-Missoula, asked for clarification of the legislation referenced and was told by Mr. Stipcich that the legislation referred to was the Higher Education Act and that the new legislative proposals would be added onto it.

Regent Barrett suggested a motion to try to move this forward. If there are other things to consider, those can be put into another motion.

Regent Hamilton clarified that the motion was for adoption of the draft resolution that Regent Barrett proposed.

Regent Buchanan recommended not passing the resolution until receiving a response from SAF and MHESAC on the task force recommendations. He stated that it is his understanding that the legislation affects the colleagues of SAF and MHESAC more than SAF and MHESAC themselves. He noted that he is interested in how we in Montana can get out of the situation we are in.

Regent Hamilton asked Mr. Stipcich to clarify his concerns with the liquidity situation. Mr. Stipcich responded that, while financing is in place, the liquidity associated with that financing expires in December 2008.

Regent Hamilton asked what impact this would have on students preparing for the 2008-2009 academic school year if there is no liquidity in the market. Mr. Stipcich said the federal legislation being considered is only for 2008-2009 loans for students. SAF has concerns for liquidity for loans for 2008-2009 and cannot guarantee funds for loans for 2009-2010, as is the case nationwide.

Commissioner Stearns reminded the group that the SAF resolution was on the agenda as an information item and that the BOR resolution had been moved. She pointed out that there was language in both resolutions affirming the concern in Montana for affordable student loans. She said the motion was to approve Regent Barrett's draft resolution which addresses both the student loan taskforce and confirms the board's seriousness about it, and she clarified that Regent Barrett's resolution affirms the SAF resolution but also added additional language. Since the SAF resolution was on the agenda as an information item, the BOR does not have to act on it.

Regent Hamilton restated the motion.

Regent Buchanan said he was supportive of Regent Barrett's resolution and of removing Section #2 of the resolution, which supports SAF's resolution, until further notice.

Regent Pease said this was duplicating the request for a response from SAF and MHESAC. She is concerned that there are two layers of requests already. She requested setting a deadline to receive a response from SAF and MHESAC and suggested that, although SAF and MHESAC were private, they still had a responsibility to be open and transparent to the public since they are in the business of making loans to Montana students.

Regent Barrett responded that discussion had been ongoing for over a year regarding to the public/private debate. MHESAC has obtained opinion letters that say they are private. This is a legal issue and not a Board of Regents decision. Legislation may address this.

Regent Christian wants to see the issues resolved and wants some action. He stated that Section #3 in Barrett's resolution is important for the Board of Regents' response to the federal delegation.

Regent Buchanan said his understanding was that this meeting was for an update of MHESAC and SAF activities. He said the appropriate action would be to table any action on the resolutions and get an update on activities in SAF and MHESAC, which is what he is interested in. He stated he had asked for an update and was told at the March meeting that the Board of Regents would have a conference call between the March and May meetings.

Regent Barrett stated the resolution covered a broad range of the covered concerns.

The motion passed 5-2 with Regents Buchanan and Pease voting no.

Regent Buchanan moved that the Board request a legislative audit of SAF and MHESAC.

Regent Hamilton asked Ms. Swift for her opinion as to whether this motion was within the purview of the agenda. Ms. Swift stated that she believed the motion by Regent Buchanan was within the purview of the agenda topic and the discussion.

Regent Barrett asked if requesting this legislative audit was within the authority of the Board of Regents since SAF and MHESAC are private entities. He asked for Alan Peura's opinion. Mr. Peura, Montana Legislative Services, responded that he was not prepared to answer the question and would request a legal opinion from Legislative Services.

Commissioner Stearns responded that the Board of Regents had requested legislative audits before and had authority to request an audit.

Regent Hamilton asked for clarification of what will be learned by a legislative audit. Regent Buchanan said he wants to learn what is going on with SAF and MHESAC and has not been given an opportunity to get information about SAF and MHESAC.

Regent Hamilton asked what types of questions had been asked to which he hadn't received answers. Regent Buchanan said there had been numerous questions to which he has not received answers. He said he wants to know more about their business model, what levels of accountability are in place, what sort of financial practices they follow, and he hasn't been given an opportunity to sit down and get answers to his questions.

Bruce Marks, Director of the Montana Guaranteed Student Loan Program, suggested that federal authority relative to the Board's role as guarantor would need to be checked. Regent Hamilton said it was her understanding that there are federal audits already done. Mr. Marks confirmed there have been audits.

Mr. Stipcich stated he had never received any requests from Regent Buchanan for information and he would be glad to work with Regent Buchanan to answer his questions. He asked when Regent Buchanan had ever made a request for a meeting.

Regent Taylor suggested having a meeting with MHESAC in lieu of the repeated statements from other regents about wanting more information and wanting to learn more about both MHESAC and SAF. Regent Taylor stated that SAF and MHESAC can't be blamed because the market is bad. She said the BOR needs to sit in the same room and have a discussion. Regent Taylor said she is on both SAF's and MHESAC's boards and nothing has been done in secret and that a member of the governor's office joins on conference call meetings. She recommended having a meeting with the MHESAC board since there are repeated requests to learn more about them.

Regent Barrett added that SAF and MHESAC get audited routinely. Mr. Stipcich said they get as many as twelve to fourteen audits each year and that their financial audit is available on their website. Regent Barrett suggested SAF and MHESAC send Regent Buchanan copies of the audits.

Commissioner Stearns explained the Student Loan Task Force has worked diligently on this issue and that OCHE takes requests from regents very seriously, but OCHE has never found SAF to be reluctant to share information.

Regent Buchanan repeated his request for a legislative audit.

Regent Hamilton asked the commissioner to explain the legislative audit process. Commissioner Stearns said that the requests for audits generally come to the Legislative Audit Office, then the legislative audit committee chooses or selects which audits they will do, based on time and resources.

David Ewer, Director of the Governor's Office of Budget and Program Planning, added that the legislative auditor does two kinds of audits: financial audits that do not require legislative approval, which are done on a routine basis; and performance audits. Mr. Ewer expressed concerns about risk management. He stated that there is a third type of audit which is done if the legislative auditor has reason to believe there has been some wrongdoing. That can also be requested. The board of regents can also request a performance audit, which goes to the legislative audit committee to be voted on.

Regent Hamilton is concerned about the amount of staff time involved in an audit. She recommended reviewing existing audit materials

Mr. Ewer stated that the materials he has seen from SAF and MHESAC are more like financial audits. He hasn't seen any comprehensive materials such as the business models regarding risk return. Those would not typically be addressed in financial audits. The fundamental questions Regent Buchanan asked would not be answered in a financial audit.

Mr. Robinson said that type of audit would fall into the performance audit category, not the financial audit. We would probably need to identify the types of questions to be addressed in the audit.

Regent Pease stated that a performance audit is important for the students and their families to ensure that SAF and MHESAC are still addressing the needs of the students and their families. As a regent who does not serve on either SAF or MHESAC boards, she noted that it is difficult to obtain the information and gain an understanding of the whole issue. She noted the difficult times right now.

Commissioner Stearns asked if Board wants OCHE to talk to the legislative audit committee to develop possible questions.

Mr. Ewer made 3 points: One, with regard to the task force, his concerns were of continuing events that gave him a lot of pause, such as when SAF and MHESAC had a \$900M bond transaction planned. He had expressed his concern about inadequate checks and balances. Two, he stated that the Schweitzer administration believes that SAF and MHESAC, because of the nature of their business of handling student loans, need to be subject to the open meeting laws. Three, he expressed support for the motion.

Regent Hamilton restated the motion: that the regents ask for a legislative performance audit of MHESAC and SAF (in accordance with federal law)

The motion passed 5-2, with Regents Hamilton and Taylor voting no.

Public comment on matters not on the agenda: None

Meeting adjourned at 3:50 PM.

**Posted on**

**Approved by the Board of Regents on**

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Date

Date

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Sheila M. Stearns  
Commissioner of Higher Education  
and Secretary to the Board of Regents

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Lynn Morrison-Hamilton  
Chair, Board of Regents

