

# STATE OF COLORADO

## OFFICE OF THE GOVERNOR

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John W. Hickenlooper  
Governor

May 7, 2012

The Honorable Colorado House of Representatives  
The Honorable Colorado Senate  
Sixty-Eighth General Assembly  
Second Regular Session  
State Capitol Building  
Denver, Colorado 80203

Ladies and Gentlemen:

It is an honor to inform you that we have approved and filed with the Secretary of State the following Act:

House Bill 12-1335 CONCERNING THE PROVISION FOR PAYMENT OF THE EXPENSES OF THE EXECUTIVE, LEGISLATIVE, AND JUDICIAL DEPARTEMENTS OF THE STATE OF COLORADO, AND OF ITS AGENCIES AND INSTITUTIONS, FOR AND DURING THE FISCAL YEAR BEGINNING JULY 1, 2012, EXCEPT AS OTHERWISE NOTED.

We want to thank the members of the General Assembly for the cooperative work done to strike a balance between critical competing priorities as Colorado continues to climb out of a historic recession. House Bill 12-1335 (the "FY 2012-13 Long Bill") and its accompanying legislation represent constructive common ground that addresses the most vital issues facing our state.

We find the following provisions particularly noteworthy:

- *Protecting Colorado's most vulnerable citizens* – This budget includes an increase of \$4.9 million in total funds to provide essential services for an additional 173 people with developmental disabilities. Additionally, the State's Mental Health Institutes received new funding necessary to ensure the safe and effective treatment of patients. And, with growing revenues, this budget fully restores the Senior Homestead Exemption.
- *Economic Development* – With an anticipated allocation of \$5 million for employment incentives, the Office of Economic Development and International Trade expects it will attract new businesses to Colorado, potentially adding thousands of jobs in the upcoming fiscal year. The budget package also includes an anticipated \$15 million in total funds, highlighted by a \$4 million General Fund increase, to ensure continued investment in promoting Colorado's Tourism and Creative industries.

- *Educating Colorado's children* – General Fund revenue growth has allowed the State, for the first time since FY 2008-09, to maintain per pupil funding in K-12 schools even with the prior year. Moreover, the Department of Education will receive an additional \$8.7 million in total funds to support the ongoing Educator Effectiveness operations begun by S.B. 10-191. This budget also minimizes anticipated reductions to the State's institutions of higher education.
- *Modernizing government* – With \$8.6 million earmarked to modernize the Colorado Financial Reporting System (COFRS), \$1.9 million for data center consolidation, and \$22.2 million to upgrade and modernize the Colorado Benefits Management System (CBMS), this budget package presents an opportunity to stabilize and modernize several of the State's most critical IT systems.
- *Planning for future budgets* – This budget package will result in the transfer of at least \$59 million from the General Fund to the State Education Fund to help prepare for K-12 growth in the FY 2013-14 budget. In this budget, we also maintain our commitment to a 4 percent reserve in the General Fund.

Even with these positive accomplishments, we must also recognize that Colorado's budget continues to face significant challenges. The current economic recovery is welcome but slower than prior recoveries. Meanwhile, in spite of inflation and population growth, the General Fund available for expenditure in FY 2012-13 remains essentially flat when compared with FY 2007-08.

#### **Concerns with H.B. 12-1335 Footnotes**

It is the Governor's constitutional obligation to review the general appropriations bill and exercise the line item veto when necessary. We recognize and appreciate the legitimate and reasonable expression by the General Assembly of the intent associated with certain appropriations contained in the FY 2012-13 Long Bill. In fact, many of these expressions of intent are based on information contained within the Executive Branch budget requests. Meanwhile, we also note that in relation to prior years, the content of footnotes to the general appropriations bill has changed. Specifically, we interpret these expressions of intent as different from attempts to administer appropriations or to pursue substantive law via the general appropriations bill. Thus, in a departure from prior years, we have not vetoed any of the footnotes in H.B. 12-1335.

While the Legislature has the prerogative to express its intent, the Executive Branch maintains the clear and inherent responsibility to administer appropriations. (See *Colorado General Assembly v. Owens*, 136 P.3d 262 (Colo. 2006); *Colorado Genreal Assembly v. Lamm*, 704 P.2d 1371 (Colo. 1985); and *Anderson v. Lamm*, 195 Colo. 437, 579 P.2d 620 (1978).) For this reason, we have directed Executive Branch agencies to comply with the intent of the footnotes contained in H.B. 12-1335 only to the extent practicable and appropriate.

However, if operational needs dictate otherwise, the Executive Branch will not be constrained by any limitations implied within the Long Bill footnotes. In particular, State departments may find it necessary to deviate from the intent expressed in the following footnotes:

1. **Footnote 8, Page 75:** Department of Education, Assistance to Public Schools, Public School Finance, State Share of Districts' Total Program Funding – Pursuant to Section 22-35-108 (2) (a), C.R.S., the purpose of this footnote is to specify what portion of this appropriation is intended to be available for the Accelerating Students Through Concurrent Enrollment (ASCENT) Program for FY 2012-13. It is the intent of the General Assembly that the Department of Education be authorized to utilize up to \$1,198,549 of this appropriation to fund qualified students designates as ASCENT Program participants. This amount is calculated based on an estimated 205 participants funded at a rate of \$5,846.58 per FTE pursuant to Section 22-54-104 (4.7), C.R.S.
2. **Footnote 9, Page 75:** This appropriation is for the support of privately operated reading services for the blind, as authorized by Section 24-90-105.5, C.R.S. It is the intent of the General Assembly that \$300,000 of this appropriation be used to provide access to radio and television broadcasts of locally published and produced materials and \$50,000 of this appropriation be used to provide telephone access to digital transmissions of nationally published and produced materials.
3. **Footnote 10, Page 115:** The appropriations in this division assume the following caseload and cost estimates:

| <u>Aid Category</u>  | <u>Caseload</u> | <u>Estimated Costs</u> | <u>Average Cost per Client</u> |
|--|-----------------|------------------------|--------------------------------|
| Adults 65 Years of Age and Older   | 40,820          | \$1,015,339,949        | \$24,873.59                    |
| Disabled Adults 60 to 64 Years of Age  | 8,948           | 183,178,330            | 20,471.43                      |
| Disabled Individuals up to 59 Years of Age                                     | 62,098          | 1,103,485,742          | 17,770.07                      |
| Medicaid Buy-In for People with Disabilities                                   | 2,208           | 28,923,655             | 13,099.48                      |
| Categorically Eligible Low-Income Adults                                       | 77,455          | 330,531,653            | 4,267.40                       |
| Expansion Adults up to 60 Percent of Federal Poverty Level                     | 26,498          | 93,752,718             | 3,538.11                       |
| Expansion Adults between 61 Percent to 100 Percent of Federal Poverty Level    | 42,381          | 139,166,780            | 3,283.71                       |
| Adults without Dependent Children up to 100 percent of Federal Poverty Level   | 10,000          | 121,063,962            | 12,106.40                      |
| Breast and Cervical Cancer Treatment and Prevention Program Adults             | 679             | 14,913,399             | 21,963.77                      |
| Eligible Children  | 367,649         | 714,592,589            | 1,943.68                       |
| Foster Care Children   | 18,159          | 89,613,411             | 4,934.93                       |
| Pregnant Adults up to 185 Percent of Federal Poverty Level                     | 7,546           | 78,162,012             | 10,358.07                      |
| Non-Citizens Qualifying for Emergency Services                                 | 2,529           | 50,639,953             | 20,023.71                      |
| Qualified Medicare Beneficiaries and Special Low-Income Medicare Beneficiaries | 20,503          | 34,101,417             | 1,663.24                       |
| <b>Total</b>   | <b>687,473</b>  | <b>\$3,997,465,570</b> | <b>\$5,814.72</b>              |

4. **Footnote 11, Page 116:** Department of Health Care Policy and Financing, Indigent Care Program, Children's Basic Health Plan Medical and Dental Costs – This appropriation assumes the following: (1) A total children's caseload of 67,542 at an average medical per capita cost of \$2,210.13 per year; and (2) a total adult prenatal caseload of 1,360 at an average medical per capita cost of \$15,818.25 per year.
5. **Footnote 12, Page 116:** Department of Health Care Policy and Financing, Indigent Care Program, Children's Basic Health Plan Medical and Dental Costs – This appropriation assumes an average cost of \$174.02 per child per year for the dental benefit.
6. **Footnote 23, Page 199:** Department of Human Services, Division of Child Welfare, Family and Children's Programs -- It is the intent of the General Assembly that \$4,006,949 of the funds appropriated for this line item be used to assist county

departments of social services in implementing and expanding family- and community based services for adolescents. It is the intent of the General Assembly that such services be based on a program or programs that have been demonstrated to be effective in reducing the need for higher cost residential services.

7. **Footnote 50, Page 430:** Department of Revenue, Enforcement Business Group, Limited Gaming Division – It is the intent of the General Assembly that the Department of Revenue shall not spend more than 5.0 percent of Amendment 50 revenues for administrative expenses of the Limited Gaming Division.

Similarly, as with last year, we remain concerned with the General Assembly's inclusion of full-time equivalent positions (FTE) within the general appropriations act. The Colorado Supreme Court's opinion in *Anderson v. Lamm*, 195 Colo. 437, 579 P.2d 620 (1978) clearly states that "specific staffing and resource allocation decisions" in a general appropriations bill are unconstitutional. The Supreme Court affirmed this finding in *Colorado General Assembly v. Owens*, 136 P.3d 262 (Colo. 2006). Further, it remains our opinion that any predetermined prescription of FTE authorization limits the ability of State agencies to make the most resource-effective use of appropriations to accomplish critical performance objectives.

Therefore, Executive Branch agencies will not be constrained by the FTE authorizations within House Bill 12-1335, and instead have been instructed to manage their operations within the scope of the dollars appropriated in House Bill 12-1335. With this direction, however, the Office of State Planning and Budgeting and the Department of Personnel and Administration will continue to provide the enhanced quarterly reporting of actual FTE usage that we began in November 2011.

### Closing Comments

House Bill 12-1335 and its companion legislation provide a comprehensive, prudent, and thoughtful allocation of the State's taxpayer dollars. The overwhelming legislative approval of the FY 2012-13 budget shows that Colorado is a place where people get work done, and they get it done collaboratively and pragmatically. We look forward to successfully delivering the plan contained in this budget.

Thank you again for your hard work and partnership.

Sincerely,

A handwritten signature in blue ink, appearing to read "John W. Hickenlooper". The signature is fluid and cursive, with a long horizontal stroke at the end.

John W. Hickenlooper  
Governor