

STATE OF COLORADO

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John W. Hickenlooper
Governor

April 29, 2013

The Honorable Colorado Senate
Sixty-Ninth General Assembly
First Regular Session
State Capitol Building
Denver, Colorado 80203

Ladies and Gentlemen:

I have the honor to inform you that I have approved and filed with the Secretary of State the following Act:

Senate Bill 13-230 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, 2013, EXCEPT AS OTHERWISE NOTED.

With thanks to the members of the sixty-ninth General Assembly, this budget is the result of a bipartisan dedication to Colorado's values. We are enacting this budget at a unique time in our history. After enduring a significant economic downturn, Colorado's economy is outperforming the nation's. The resulting recovery is allowing us the opportunity to allocate resources for the common good. Yet, as we look ahead, FY 2013-14 expected revenue is 12.6 percent, or almost \$1 billion, lower when adjusted for population and inflation since FY 2007-08. Moreover, we know that some of our recent recovery in revenue is one-time in nature and the budget plan for next year is appropriately prudent and forward-looking. Though many programs are seeing increases, we have also eliminated long-term liabilities, grown our reserves, and ensured some of our new spending is on one-time items. Notably, we have increased our General Fund reserve to five percent and we have identified at least \$300 million in one-time actions.

Senate Bill 13-230 (the "FY 2013-14 Long Bill") and its accompanying legislation reflect our shared commitment to meet the needs of our most vulnerable residents, to support the educational needs of our children, to promote economic development, to invest in critical infrastructure, and to plan for the future. We are also proud to note that the FY 2013-14 budget includes significant and meaningful enhancements to the areas of child welfare and mental health.

- *Protecting Colorado's most Vulnerable Residents* – This budget includes an increase of \$13.5 million in total funds to provide essential services for an additional 765 people with developmental disabilities. This level of funding will eliminate the wait list for all children needing services through the Children's Extensive Services Medicaid waiver.

Additionally, this budget includes \$4.0 million in new funding for programs that assist elderly Coloradans with needs such as meals and transportation.

- *Enhancements to our Mental Health System* – The budget includes \$7.5 million in total funds to provide additional mental health community placements, a jail-based restore-to-competency program, and additional resources for school based mental health services. Funding of \$19.8 million to establish a statewide mental health crisis system is included in a separate bill (SB 13-266).
- *Protecting Colorado’s Children from Abuse and Neglect* – This budget includes an increase of \$13.3 million in total funds for the Child Welfare system. These funds were added as part of the Governor's *Keeping Kids Safe and Families Healthy 2.0* plan. The plan includes funding to implement and strengthen prevention and intervention services, improve public awareness about child abuse and neglect, enhance training and technology for child welfare professionals, and to improve overall transparency in the system.
- *Support for K-12 and Higher Education* – Upon completion of the School Finance Act, we expect to increase funding for K-12 education by \$210.2 million, which exceeds the amount required by inflation and enrollment. Average per pupil funding will grow by \$171.80. We have sufficient funding for an additional 3,200 pre-school slots. In higher education, this budget adds General Fund appropriations of \$31.0 million in direct support to the College Opportunity Fund and \$5.3 million in financial aid for students. In addition, the budget allocates almost \$102 million for capital construction and controlled maintenance projects for institutes of higher education.
- *Promoting Economic Development* – This budget provides funding to continue the economic development initiatives that were expanded in FY 2012-13. This includes \$2.9 million for new job creation incentives for companies relocating to our state, or for Colorado companies expanding their workforce. Also, the budget provides over \$1.0 million to incentivize film, television, and media production activities that will result in direct expenditures in our local communities. In addition to shoring up existing efforts, the budget includes a \$2.0 million General Fund increase for tourism promotion and the development of a branding platform that will be designed to attract tourists, businesses, capital, and potential workers to Colorado.
- *Investing in critical infrastructure* – We appreciate the General Assembly’s shared view that significant amounts of our current resources are likely one-time in nature. During the Great Recession, the State fell behind in maintaining infrastructure. As such, the budget for FY 2013-14 sets aside \$188.1 million for capital construction projects. This amount includes \$44.9 million to perform nearly 70 discrete controlled maintenance projects, and an additional \$93.7 million for new construction and renovation projects involving State-owned buildings. Not only will these planned expenditures provide some much needed enhancements to our aging building infrastructure, they will also directly inject funds into Colorado’s construction economy.
- *Planning for the future* – With this package of budget bills, the State’s General Fund reserve will increase to 5.0 percent of total expenditures. This places nearly \$80 million more in savings than required with the previous 4.0 percent reserve. The last two

recessions caused revenue in the General Fund to decline by approximately 15% each time. This increase is a great first step to a reserve that better reflects the risks to the budget in a recession.

Concerns with S.B. 13-230 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 2013-14 Long Bill. In fact, many of these expressions of intent are based on information contained within the Executive Branch budget requests. In general, we interpret these expressions of intent as different from attempts to administer appropriations or to pursue substantive law via the general appropriations bill. Thus, we have not vetoed any of the footnotes in S.B. 13-230.

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 General 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 S.B. 13-230 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:

- **Footnote 4, page 42:** 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 2013-14. It is the intent of the General Assembly that the Department of Education be authorized to utilize up to \$2,709,450 of this appropriation to fund qualified students designated as ASCENT Program participants. This amount is calculated based on an estimated 450 FTE participants funded at a rate of \$6,021 per FTE pursuant to Section 22-54-104 (4.7), C.R.S.
- **Footnote 5, page 42:** Department of Education, Assistance to Public Schools, Public School Finance, State Share of Districts' Total Program Funding – It is the intent of the General Assembly that a portion of the amount appropriated for this line item, not to exceed \$250,000 for fiscal year FY 2013- 14, shall be transferred to the Legislative Council for the purpose of funding the biennial cost of living analysis pursuant to Section 22-54- 104 (5) (c) (III) (B), C.R.S.
- **Footnote 6, page 42:** Department of Education, Library Programs, Reading Services for the Blind – 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.

- **Footnote 10, page 64:** Department of Health Care Policy and Financing, Medical Service Premiums – This appropriation assumes that the Department will allow primary care providers to receive reimbursement for providing oral health risk assessments and applying fluoride varnishes up to three times per year for children five years and older.
- **Footnote 10a, page 64:** Department of Health Care Policy and Financing, Medical Services Premiums – The appropriation in this line item includes \$1,146,806 of \$573,403 General Fund and \$573,403 federal funds for treatment of women with breast and cervical cancer regardless of diagnoses.
- **Footnote 11, page 64:** 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 72,649 at an average medical per capita cost of \$2,231.06 per year; and (2) a total adult prenatal caseload of 1,398 at an average medical per capita cost of \$13,517.34 per year.
- **Footnote 12, page 64:** 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 \$183.07 per child per year for the dental benefit.
- **Footnote 25, page 108:** 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.
- **Footnote 47, page 147:** Department of Military and Veterans Affairs, Division of Veterans Affairs, Mental Health, Employment, Housing and Other Veterans Services – It is the intent of the General Assembly that these moneys be granted to non-profit or governmental entities that provide mental health, family counseling, job training, employment, housing, and other services to veterans and that the Colorado Board of Veterans Affairs assist the Division in developing grant-making criteria and selecting grant recipients. *Funding for entities providing housing for homeless veterans will be given priority.* Up to three percent of this appropriation may be used for related administrative expenses incurred by the department.
- **Footnote 62, page 230:** 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 in recent years, 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

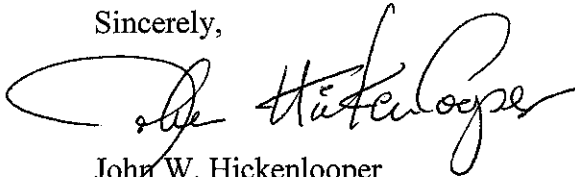
states that “specific staffing and resource allocation decisions” in a general appropriations bill are unconstitutional. The Supreme Court affirmed this finding in *Colorado General Assembly v. Owens*, 136 P.3d 262 (Colo. 2006). Further, it remains our opinion that any predetermined prescription of FTE 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 are instructed to manage their appropriations within the scope of the dollars appropriated in Senate Bill 13-230 and without limitation by the bill’s FTE authorizations. With this direction, however, the Office of State Planning and Budgeting and the Department of Personnel and Administration will continue to provide a detailed quarterly reporting of actual FTE usage that we began in November 2011.

Closing Comments

Senate Bill 13-230 and its companion legislation continue the recent tradition of a prudent and thoughtful allocation of the State’s taxpayer dollars. We greatly appreciate your hard work and partnership, and look forward to implementing the plans contained in this budget.

Sincerely,

A handwritten signature in black ink, appearing to read "John W. Hickenlooper", with a large, stylized flourish at the end.

John W. Hickenlooper
Governor