

STATE OF COLORADO

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John W. Hickenlooper
Governor

April 30, 2014

The Honorable Colorado House of Representatives
Sixty-Ninth General Assembly
Second 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:

House Bill 14-1336 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, 2014, EXCEPT AS OTHERWISE NOTED.

This bill and its accompanying legislative package culminate four years of bipartisan efforts to craft budgets that reflect the diverse values of Colorado's residents. The budget for FY 2014-15 makes prudent use of revenues resulting from our state's strong economic performance, substantially increasing General Fund reserves and addressing critical issues in our state. Of the many notable accomplishments in this budget package, we are proud to highlight these:

- *General Fund Reserves* – This budget package raises the amount of revenue set aside in reserve to 6.5 percent of General Fund appropriations. This represents significant progress from the 2.0 percent reserve from just three years ago, and places Colorado on much firmer footing when the inevitable next revenue downturn comes.
- *Disaster Recovery and Preparedness* – Coupled with the supplemental budgets for FY 2013-14, our FY 2014-15 budget ensures that Colorado can continue its recovery from last September's devastating floods. Further, we are positioned with substantial available resources, including an enhanced aerial firefighting presence, to cope with the impacts of future wildfires and other disasters.
- *Support for K-12 Education* – In FY 2014-15, spending on K-12 Education will keep pace with enrollment *plus* inflation and continues our recovery from the effects of the Great Recession by maintaining efforts to reduce the *negative factor*. This budget also

includes targeted increases in special education programs for children with disabilities, English language proficiency programs, public school transportation, career and technical programs, and gifted and talented programs.

- *Aid to Students in Higher Education* – With over \$100 million in additional funding for institutions of Higher Education, including \$40 million for financial aid, Colorado’s college students will see some relief from the ongoing growth in the cost of earning an undergraduate degree. This budget slows tuition growth at institutions across all of Colorado for FY 2014-15.
- *Law Enforcement Stability* – The FY 2014-15 budget accommodates growing demand for the services of our Colorado Bureau of Investigation. We have provided funding for expanded laboratory operations in both Denver and Pueblo to allow the CBI to efficiently test thousands of sexual assault kits that, before the passage of H.B. 13-1020, local law enforcement agencies were unable to test. We also anticipate signing legislation that uses the revenue from legalized marijuana to protect and educate children and to enforce responsible rules and regulations for this new industry.
- *Reforms to Colorado’s Parole System* – We have set aside funding for critical enhancements to important Parole programs in the Department of Corrections. These range from initiatives aimed to ease offenders’ transitions from prison to parole, to reducing caseload ratios for parole officers.
- *Promoting Economic Development* – The FY 2014-15 budget will continue and enhance many economic development initiatives that we began in FY 2013-14, including significant investments in programs and projects to assist Colorado companies in burgeoning industries ranging from aerospace to medical devices.
- *Driver’s License Modernization* – This budget includes a substantial increase for the Department of Revenue to modernize its driver’s license offices, both with advanced technology and better staffing. When these enhancements are fully implemented, Colorado drivers can expect average wait times of less than 15 minutes when renewing their licenses.

Concerns with H.B. 14-1336 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 2014-15 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 most of 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 H.B. 14-1336.

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 H.B. 14-1336 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, the following footnotes comprise attempts by the General Assembly to administer the appropriation, and State departments may find it necessary to deviate from the intent expressed:

- **Footnote 5, page 41:** 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 2014-15. It is the intent of the General Assembly that the Department of Education be authorized to utilize up to \$4,419,336 of this appropriation to fund qualified students designated as ASCENT Program participants. This amount is calculated based on an estimated 708 FTE participants funded at a rate of \$6,242 per FTE pursuant to Section 22-54-104 (4.7), C.R.S.
- **Footnote 6, page 41:** 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 \$310,000 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 15a, page 66:** Department of Health Care Policy and Financing, Office of Community Living, Division for Individuals with Intellectual and Developmental Disabilities, Administrative Costs – It is the intent of the General Assembly that the Division use the administrative costs to ensure that in FY 2014-15 at least 4,820 individuals are enrolled in and receiving adult comprehensive services, at least 5,949 individuals are enrolled in and receiving adult supported living services, and at least 1,204 children are enrolled in and receiving children's extensive support services.
- **Footnote 27, page 110:** Department of Human Services, County Administration, County Administration – It is the intent of the General Assembly that \$2,000,000 of the funds appropriated for this line item be a one-time appropriation for food assistance administration. Of this total, \$600,000 shall be from General Funds, \$400,000 shall be from local funds, and \$1,000,000 shall be from various federal funds.
- **Footnote 34, page 111:** 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 37c, page 112:** Department of Human Services, Office of Self Sufficiency, Colorado Works Program, County Block Grants – It is the intent of the General Assembly that \$2,000,000 of the federal funds appropriation to this line item be allocated to counties for employment-focused programs.
- **Footnote 38, page 112:** Department of Human Services, Behavioral Health Services, Mental Health Community Programs, Mental Health First Aid – It is the intent of the General Assembly that this appropriation be used for the purpose of augmenting existing contracts with the approved agencies as specified in Section 27-66-104, C.R.S., in order to train additional Mental Health First Aid instructors and to certify educators, first responders, and military service personnel in Mental Health First Aid.
- **Footnote 40, page 113:** Department of Human Services, Behavioral Health Services, Substance Use Treatment and Prevention, Treatment Services, Treatment and Detoxification Contracts – It is the intent of the General Assembly that the department continue to use this appropriation to fund the provision of substance use disorder treatment and detoxification services consistent with existing contract requirements. It is further the intent of the General Assembly that the Department refrain from withholding base funding from contractors for the purpose of making subsequent incentive-based payments until the Department has: (a) clearly identified the performance measures and procedures that will be used to implement performance-based payments; and (b) provided contractors with a reasonable period of time to make the data system and programmatic changes that may be necessary to achieve the Department’s desired performance goals.
- **Footnote 41, page 113:** Department of Human Services, Behavioral Health Services, Integrated Behavioral Health Services, Rural Co-occurring Disorder Services – It is the intent of the General Assembly that this appropriation be used for the purpose of providing a full continuum of co-occurring behavioral health treatment services in southern Colorado and the Arkansas Valley.
- **Footnote 46, page 114:** Department of Human Services, Adult Assistance Programs, Community Services for the Elderly, State Funding for Senior Services – It is the intent of the General Assembly that \$500,000 General Fund of this appropriation be used for the purpose of providing services to individuals who are blind or visually impaired.
- **Footnote 63, page 164:** Department of Natural Resources, Division of Reclamation, Mining, and Safety, Emergency Response Costs – It is the intent of the General Assembly that the purpose of increasing this line item appropriation is to fund all emergency response costs for the Division of Reclamation, Mining, and Safety.
- **Footnote 69, page 200:** Department of Public Health and Environment, Air Pollution Control Division, Stationary Sources, Air Quality Dispersion Study – It is the intent of

the General Assembly that the appropriation be used for the purpose of collecting data that will be used to conduct a health risk assessment.

In addition, the General Assembly has included the following four footnotes that could be viewed as substantive law in the general appropriations bill.

- **Footnote 1, multiple pages:** All Departments except Department of Corrections and Department of Human Services, Totals – It is the intent of the General Assembly that when each department applies the 2.5 percent salary survey increase reflected in the salary survey line item appropriations, each employee shall receive a base-building increase up to the range maximum, and that salary survey increase amounts over the range maximum shall not be base-building.
- **Footnote 4a, page 27:** Department of Corrections, Totals – It is the intent of the General Assembly that when the Department of Corrections applies the 2.5 percent salary survey increase reflected in the salary survey line item appropriations, that employees other than Corrections Case Managers, Corrections/Youth/Clinical Officers, and Community Parole Officers shall receive a base-building increase up to the range maximum, and that salary survey increase amounts over the range maximum shall not be base-building. It is the intent of the General Assembly that Corrections Case Managers, Corrections/Youth/Clinical Officers, and Community Parole Officers shall receive a base-building increase below, at, or over the range maximum because range minimums and maximums for Corrections Case Managers, Corrections/Youth/Clinical Officers, and Community Parole Officers adjust to reflect any increase.
- **Footnote 48, page 114:** Department of Human Services, Totals – It is the intent of the General Assembly that when the Department of Human Services applies the 2.5 percent salary survey increase reflected in the salary survey line item appropriations, that employees other than Corrections/Youth/Clinical Officers shall receive a base-building increase up to the range maximum, and that salary survey increase amounts over the range maximum shall not be base-building. It is the intent of the General Assembly that Corrections/Youth/Clinical Officers shall receive a base-building increase below, at, or over the range maximum because range minimums and maximums for Corrections/Youth/Clinical Officers adjust to reflect any increase.
- **Footnote 75a, page 215:** Department of Public Safety, Totals – It is the intent of the General Assembly that when the Department of Public Safety applies the 2.5 percent salary survey increase reflected in the salary survey line item appropriations, that employees other than those in the State Patrol Job Series shall receive a base-building increase up to the range maximum, and that salary survey increase amounts over the range maximum shall not be base-building. It is the intent of the General Assembly that employees in the State Patrol Job Series shall receive a base-building increase below, at, or over the range maximum because range minimums and maximums for this series adjust to reflect any increase.

Beyond expressing intent, these four footnotes effectively direct the Department of Personnel and Administration to adjust its salary survey instrument to accommodate base-building raises that would otherwise exceed maximum allowable salaries for several job classifications. Furthermore, the footnotes direct three departments to disregard current law and pay salaries that

exceed the maximum allowable amounts for certain job classifications. In response to these footnotes, DPA will work closely with the Employee Representation Organizations that represent certain State employees to ensure fair and equitable range and salary increases for all State employees.

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 H.B. 14-1336 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 reporting of actual FTE usage that we began in November 2011.

Closing Comments

House Bill 14-1336 and its companion legislation continue the recent tradition of a prudent and thoughtful allocation of the State's taxpayer dollars. With gratitude for your efforts and partnership, we 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 long horizontal flourish extending to the right.

John W. Hickenlooper
Governor