

STATE OF COLORADO

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John W. Hickenlooper
Governor

April 24, 2015

The Honorable Colorado Senate
Seventieth 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 15-234 CONCERNING THE PROVISION FOR PAYMENT OF THE EXPENSES OF THE EXECUTIVE, LEGISLATIVE, AND JUDICIAL DEPARTMENTS OF THE STATE OF COLORADO, AND OF ITS AGENCIES AND INSTITUTIONS, FOR AND DURING THE FISCAL YEAR BEGINNING JULY 1, 2015, EXCEPT AS OTHERWISE NOTED.

We applaud the cooperative spirit displayed by the Seventieth General Assembly in crafting this bill and its accompanying legislative items. The FY 2015-16 budget crafts a careful balance between the public needs that accompany a growing economy and the fiscal prudence ahead of looming challenges caused by our conflicting constitutional provisions. This bipartisan budget contains elements of which both sides of the aisle can be proud:

- *K-12 Education* – With the expected passage of the annual School Finance Act, funding for primary and secondary education will increase with inflation and enrollment over the prior year, augmented by an ongoing \$25 million reduction in the negative factor.
- *Higher Education* – The budget provides meaningful support to increase access for all Colorado families to higher education. With nearly \$100 million in new General Fund appropriations, we have increased the availability of scholarship opportunities for Colorado students and tuition increases will be below 6.0 percent. Fiscal Year 2015-16 is also the first year of a bold performance funding model wherein performance factors, school mission, and student success are major components of resource allocations.

- *State Infrastructure* – The FY 2015-16 budget contains over \$240 million in investments to maintain and improve critical State buildings and systems. \$52 million is set aside to complete the DRIVES project in the Department of Revenue, which will overhaul the IT systems used for drivers' licenses and vehicle registrations. In addition, this budget provides support for critical building refurbishments in departments ranging from Human Services to Higher Education, located all across the state.
- *Child Welfare* – To address ongoing challenges with funding for child welfare at the county level, this budget allows for an additional 100 caseworkers in counties throughout Colorado.
- *Transportation* – For the first time since FY 2007-08, Colorado will provide meaningful General Fund support to transportation needs. In accordance with SB 09-228, we will transfer \$102.6 million to the Highway Users Tax Fund to support critical road construction and transit projects.
- *TABOR Refunds* – Under current law, Coloradans will receive rebates of excess revenue per the provisions of 1992's Taxpayer's Bill of Rights. From FY 2014-15 to FY 2015-16, it is estimated that direct refunds to taxpayers will be between \$186.5 million and \$340.2 million. This budget also includes the potential liability for a separate rebate of new taxes collected under Proposition AA.

As we look ahead, despite our State's strong economic performance, the constitutional complexities that govern our fiscal affairs point toward a difficult budget in FY 2016-17. As factors converge to require both growth in expenditures and rebates to taxpayers, we believe the General Assembly has adopted an appropriately prudent budget that leaves Colorado as well-positioned as possible within current law to meet our future challenges.

Concerns with S.B. 15-234 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 2015-16 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 SB 15-234.

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 SB 15-234 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 6, page 43:** 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 2015-16. It is the intent of the General Assembly that the Department of Education be authorized to utilize up to \$3,652,000 of this appropriation to fund qualified students designated as ASCENT Program participants. This amount is calculated based on an estimated 550 FTE participants funded at a rate of \$6,640 per FTE pursuant to Section 22-54-104 (4.7), C.R.S.
- **Footnote 7, page 43:** 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 \$360,000 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 8, page 44:** Department of Education, Library Programs, State Grants to Publicly-Supported Libraries Program -- It is the intent of the General Assembly that grants provided through this line item be used to support efforts to improve early literacy.
- **Footnote 11, page 67:** Department of Health Care Policy and Financing, Executive Director's Office, Information Technology Contracts and Projects, Colorado Benefits Management Systems, Operating and Contract Expenses -- It is the General Assembly's intent that necessary changes be made to the Colorado Benefits Management System to allow, beginning in FY 2016-17, the use of annualized income for purposes of determining Medicaid eligibility for adults who present evidence of fluctuating income. Allowing the use of annualized income in FY 2016-17 is projected to effect 20,430 clients who would receive an average of 3.48 months more of Medicaid services in a year at a cost of \$12,281,696 total funds, including \$1,410,508 General Fund.
- **Footnote 12, page 68:** Department of Health Care Policy and Financing, Medical Service Premiums -- This appropriation includes \$1 million from an intergovernmental transfer from Denver Health, the purpose of which is to finance an amendment to the state plan to provide nursing home services for chronically acute, long-stay patients.
- **Footnote 13, page 68:** Department of Health Care Policy and Financing, Medical Service Premiums -- This appropriation includes \$711,238 total funds, including \$350,000 General Fund and \$361,238 federal funds for the purpose of increasing the current \$12,500 lifetime cap on home modifications by an amount projected to be feasible within this level of funding, up to a maximum lifetime cap of \$20,000.
- **Footnote 15, page 68:** Department of Health Care Policy and Financing, Office of Community Living, Division for Individuals with Intellectual and Developmental Disabilities, Program Costs, Preventive Dental Hygiene -- It is the intent of the General

Assembly that this appropriation be used to provide special dental services for persons with developmental disabilities.

- **Footnote 17, page 68:** Department of Health Care Policy and Financing, Department of Human Services Medicaid-funded Programs, Behavioral Health Services - Medicaid Funding, High Risk Pregnant Women Program -- This appropriation is intended to include sufficient funding for the Department of Health Care Policy and Financing to implement the following provider rate increases for this program: (a) a \$13.98 (91.3 percent) increase in the outpatient group rate; (b) a \$31.26 (20.0 percent increase in the per diem rate; plus (c) an overall rate increase of 1.7 percent.
- **Footnote 28, page 115:** 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 demonstrated to be effective in reducing the need for higher cost residential services.
- **Footnote 29, page 115:** Department of Human Services, Division of Child Welfare, Hotline for Child Abuse and Neglect -- It is the intent of the General Assembly that \$4,198,864 of this appropriation be used for the purpose of hotline technology, the help desk, and the hotline implementation fund.
- **Footnote 29a, page 115:** Department of Human Services, Office of Early Childhood, Division of Community and Family Support, Early Childhood Mental Health Services -- It is the intent of the General Assembly that this appropriation be used for the purpose of supporting early childhood mental health specialists in each community mental health center.
- **Footnote 31, page 115:** Department of Human Services, Office of Self Sufficiency, Colorado Works Program, County Block Grants -- The appropriation of local funds for Colorado Works program county block grants may be decreased by a maximum of \$100,000 to reduce one or more small counties' fiscal year 2015-16 targeted or actual spending level pursuant to Section 26-2-714 (8), C.R.S.
- **Footnote 32, page 116:** 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 36, page 116:** Department of Human Services, Behavioral Health Services, Substance Use Treatment and Prevention -- It is the intent of the General Assembly that the Department refrain from withholding any portion of the state funds appropriated in this section from contractors for the purpose of making subsequent incentive-based payments.
- **Footnote 44, page 117:** 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 for seniors who are blind or visually impaired and whose sight loss cannot be corrected with prescription lenses in order to assist them in maintaining their independence in their home.

- **Footnote 59a, page 296:** Department of Local Affairs, Division of Local Government, Field Services, Other Local Government Grants -- It is the intent of the General Assembly that the Department use this appropriation to make redevelopment planning grants to local governments in El Paso County for redevelopment of North Nevada Ave. The General Assembly expects that the resulting plan will recognize the importance of community corrections to El Paso County, the importance of community buy-in regarding community corrections, and make every effort to preserve community corrections resources in El Paso County. This appropriation remains available until June 30, 2017.
- **Footnote 65, page 205:** 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.
- **Footnote 72, page 222:** Department of Public Safety, Division of Criminal Justice, Community Corrections, Community Corrections Placements -- It is the intent of the General Assembly that the Intensive Residential Treatment (IRT) bed allocation in the San Luis Valley should not be reduced below 36 beds for the Southern Central Colorado Region to ensure bed capacity for this part of the state.
- **Footnote 73, page 222:** Department of Public Safety, Division of Criminal Justice, Community Corrections, Community Corrections Facility Payments -- These payments may be withheld in whole or in part from facilities that: (1) fail to maintain an average ratio of at least one case manager for every 20 residents; (2) fail to raise average pay and benefits of security staff members by at least 1 percent; or (3) fail to raise the average pay and benefits of case managers by 1 percent. A facility is exempt from requirement (2) if the sum of average pay and benefits for security staff members exceeds \$33,000 annually. A facility is exempt from requirement (3) if the sum of average salary and benefits for case managers exceeds \$38,500 annually. For purposes of this footnote, payroll taxes are not benefits. Community corrections programs are encouraged to exceed these goals. It is the intent of the General Assembly that community corrections facilities with an average of 32 or more security FTE receive a second facility payment.
- **Footnote 74, page 240:** Department of Revenue, Division of Motor Vehicles, Driver Services, Personal Services -- The initial fiscal note estimated a total of 66,000 individuals would request an appointment for a S.B. 13-251 document. Continued operations for this program at more than one office are premised on the need to handle the upfront surge of applicants. It is the intent of the General Assembly that once the annual appointments made available for individuals who are not lawfully present in the United States falls below 5,000 per year or the total appointments served reaches 60,000 the Division will reduce the offices that provide the service to one location.
- **Footnote 75, page 247:** Department of Transportation, Construction, Maintenance, and Operations -- It is the intent of the General Assembly that the Department of Transportation work with local communities to study the economic development benefits of improving Highway 50 between Salida and the Kansas state line.
- **Footnote Capital Construction 1, page 265:** Capital Construction, Capital Construction, Capital Renewal, and Capital Lease Purchase Payments, Department of Human Services, Resident Safety and Accessibility Improvements, Colorado Veterans Community Living Centers -- It is the intent of the General Assembly that this appropriation be used for life-safety improvements for the safety of memory-impaired

residents to the extent that the funding provides. It is the further intent of the General Assembly that such life-safety improvements include the following specific projects: site security; access control; fall mitigation upgrades; corridor handrails and lighting; secure outdoor activity area for memory/Alzheimer's unit; resident dining room addition at Florence; sanitary line replacement at Florence; covered front entrance with enhanced lighting at Rifle; and window replacement at Rifle.

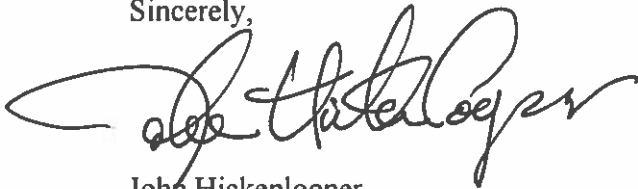
As in recent years, we also remain concerned with the General Assembly's inclusion of full-time equivalent positions (FTE) within the general appropriations act. The Colorado Supreme Court's opinion in *Anderson v. Lamm*, 195 Colo. 437, 579 P.2d 620 (1978) clearly states that "specific staffing and resource 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 SB 15-234 and without limitation by the bill's FTE authorizations.

Closing Comments

Senate Bill 15-234 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 Hickenlooper", written in a cursive style.

John Hickenlooper
Governor