

STATE OF COLORADO

OFFICE OF THE GOVERNOR

136 State Capitol Building
Denver, Colorado 80203
(303) 866 - 2471
(303) 866 - 2003 Fax



John W. Hickenlooper
Governor

May 3, 2016

The Honorable Colorado House of Representatives
Seventieth General Assembly
Second Regular Session
State Capitol Building
Denver, Colorado 80203

Ladies and Gentlemen:

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

House Bill 16-1405 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, 2016, EXCEPT AS OTHERWISE NOTED.

Approved May 3, 2016 at 2:38 p.m.

This bill, and the accompanying legislative items that comprise the FY 2016-17 budget, reflect the commitment and collaboration of many participants over the last year. The Colorado General Assembly has a long history of setting aside disagreements that in other states would lead to acrimonious gridlock. In keeping with that tradition, the budget agreement reflects the best spirit of bipartisanship in the United States and it will effectively serve the entire state Colorado.

Notable highlights include:

- *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. In addition, the *negative factor* is reduced to \$830.7 million for FY 2016-17, \$24.5 million below the \$855.2 million contained in the initial FY 2015-16 appropriation.
- *Child Welfare* – In the second phase of a continuing effort to boost funding for child welfare at the county level, this budget sets aside \$6.1 million General Fund for an additional 100 caseworkers in counties throughout Colorado.

- *Youth Corrections* – With an increase of \$2.2 million General Fund, this budget adds 36.3 FTE to address safety concerns in Colorado’s State-owned and State-operated youth corrections facilities.
- *Transportation* – The budget plan allocates \$150 million from the General Fund to the Highway Users Tax Fund to support transportation infrastructure.

As we look into future fiscal years, State Constitutional limits on revenue and requirements to increase expenditures will create challenging budget situations even if Colorado continues to experience positive economic conditions. Meanwhile, though the current economic expansion continues, we continue to monitor the impact of the decline of the oil and gas sector and its impact on the overall economy and local communities.

Concerns with H.B. 16-1405 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 2016-17 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. 16-1405.

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. 16-1405 only to the extent practicable and appropriate.

Moreover, if operational needs dictate otherwise, the Executive Branch will not be constrained by any limitations implied within any of the Long Bill footnotes. In particular, footnotes that indicate dollar amounts for expenditure in specific programs or for specific purposes may comprise attempts by the General Assembly to administer the appropriation, and State departments may deviate from the intent expressed as necessary.

Five footnotes included in H.B. 16-1405 are of particular concern to us:

- **Footnote 1, page 13:** Department of Agriculture, Agriculture Services, Plant Industry Division – It is the intent of the General Assembly that the portion of this appropriation used by the Division to support the 13.3 FTE for the inspection and enforcement of pesticide use on marijuana and industrial hemp crops not be continued for any fiscal year after FY 2017-18, unless justification for the continued need is provided by the Department through a formal request.

Our administration believes that the safe use of pesticides on marijuana and industrial hemp crops will remain an indefinite concern for the health and welfare of residents and visitors in Colorado. For this reason, we do intend to revisit this issue during the 2017 legislative session to seek a more permanent funding solution for this important program.

- **Footnote 42, page 117:** 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.

Our administration agrees with the intent of this footnote, and the Department of Human Services (DHS) will make every reasonable effort to ensure that each community mental health center (CMHC) will choose to employ early childhood mental health specialists. However, because the State secures the services of CMHCs through a competitive procurement process, we cannot guarantee that each CMHC will respond satisfactorily to the procurement solicitations issued by DHS.

- **Footnote 49, page 114:** 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.

The Department of Human Services secures behavioral health treatment services through a competitive procurement process. While DHS will comply with the intent of this footnote, the Department cannot guarantee that vendors will respond to its procurement solicitation with satisfactory offers to provide acceptable services in the specified geographical areas.

- **Footnote 80, page 211:** Department of Public Health and Environment, Administration and Support, Administration, Leave Payouts – The Department may use this line item for leave payouts for cash funded and federal funded employees only.

This footnote administers the appropriation. The Department of Public Health and Environment will observe existing State and federal rules in the use of indirect cost recoveries for leave payouts, and will comply with the intent of this footnote only when practicable.

- **Footnote 87, page 228:** 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.

The Department of Public Safety (CDPS) secures intensive residential treatment community corrections services through a competitive procurement process. While CDPS will comply with the intent of this footnote to the extent possible, the Department cannot guarantee that vendors will be available to provide this quantity of satisfactory services in the specified geographical areas.


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 H.B. 16-1405 and without limitation by the bill's FTE authorizations.

Closing Comments

House Bill 16-1405 and its companion legislation culminate a difficult but productive year of work for Colorado's budget planners. We would like to express our gratitude for the work performed by the Joint Budget Committee members, the Joint Budget Committee staff, the staff of the Office of State Planning and Budgeting, and the scores of budget analysts throughout Colorado's government, all of whose tireless efforts on behalf of Colorado are sometimes overlooked.

Sincerely,



John W. Hickenlooper
Governor