

STATE OF COLORADO

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John W. Hickenlooper
Governor

May 26, 2017

The Honorable Colorado Senate
Seventy-First General Assembly
First 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:

Senate Bill 17-254 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, 2017, EXCEPT AS OTHERWISE NOTED.

Approved May 26, 2017 at 9:20 a.m.

With the FY 2017-18 budget and its accompanying legislative package, the Colorado General Assembly has once again distinguished itself with a spirit of bipartisan compromise. This budget continues a Colorado tradition of prioritizing prudent spending increases for critical programs in a constricted revenue environment.

Separate from the budget package, the passage of S.B. 17-267 ensures that Colorado's budget can meet the needs of a growing state, subject to the normal fluctuations of economic activity. We applaud the General Assembly for this and many other important achievements during the 2017 Legislative session, including:

- *K-12 Education* – With the 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 \$828.3 million for FY 2017-18, \$2.4 million below the \$830.7 million contained in the initial FY 2016-17 appropriation.
- *Housing for at-risk populations* – This budget provides \$15.3 million from the Marijuana Tax Cash Fund to provide permanent supportive housing and rapid re-housing assistance for individuals with behavioral health needs, and for individuals experiencing or at-risk

of homelessness. By providing stable housing, which includes rental assistance and supportive services, we expect to reduce incarceration, hospitalization, and homelessness for many of Colorado's most vulnerable citizens.

- *Unregulated “Gray Market” Medical Marijuana Activity* – H.B. 17-1220 and H.B. 17-1221 create the authority and resources needed to combat and prevent the illegal diversion of medical marijuana to unregulated markets, or "gray market" activity. In addition to placing a new 12-plant cap on the number of plants that can be possessed or grown on a residential property, these bills also create a grant program totaling \$5.9 million from the Marijuana Tax Cash Fund to reimburse local governments for law enforcement and prosecution costs associated with gray and black marijuana markets.
- *School Health Professionals Grant Program* – The Department of Education received an increase of \$9.7 million from the Marijuana Tax Cash Fund to augment a program that offers matching grants to School Districts, Local Education Authorities, and charter schools to increase the presence of health professionals in secondary schools. These grants are estimated to increase by 150 the number of school health professionals statewide, providing education, universal screening, referral, and care coordination for students with substance abuse and other behavioral health needs.
- *Addressing Mental Health in Colorado’s Criminal Justice System* – Through S.B. 17-207, the Department of Human Services received \$7.1 million from the Marijuana Tax Cash Fund aimed at ending the use of jails for holding people who have committed no crime and are experiencing a mental health crisis, and to implement criminal justice diversion programs at the local level. These initiatives will help direct individuals with immediate mental health and substance needs to more appropriate services outside the criminal justice system.

Concerns with S.B. 17-254 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 2017-18 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 S.B. 17-254.

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. 17-254 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, many footnotes in S.B. 17-254 may constitute attempts by the General Assembly to administer the appropriation, including:

- those that indicate dollar amounts for expenditure in specific programs or for specific purposes; and
- those that indicate specific expectations for programmatic expenditures or activities.

As such, State departments may deviate from the intent expressed in any footnote as necessary.

Five footnotes included in S.B. 17-254 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 2018 Legislative session to seek a more permanent funding solution for this important program.

- **Footnote 41, page 119:** 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 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. The Department will conduct targeted outreach to each of the CMHCs to encourage their participation in this effort.

- **Footnote 47, page 120:** 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.

After issuing a Request for Proposals during FY 2016-17 for this purpose, the Department of Human Services was able to contract with one vendor to provide these services in the Arkansas Valley. The Department will monitor this vendor to ensure the greatest possible compliance with the intent of this footnote.

- **Footnote 68a, page 176:** Department of Natural Resources, Oil and Gas Conservation Commission, Program Costs – It is the General Assembly's intent that \$750,000 from the Severance Tax Operational Fund appropriated to this line item be expended hiring individuals for the nine vacant positions being held vacant due to revenue shortfalls identified in the Department of Natural Resources Staff Memo dated March 29, 2017.

This footnote attempts to administer the appropriation by directing the hiring of a specific number of FTE positions in this program. While our administration agrees with the intent of this footnote, the Department of Natural Resources may reprioritize the use of this funding as the business needs of the Oil and Gas Conservation Commission dictate.

- **Footnote 76, page 212:** 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.

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 S.B. 17-254 and without limitation by the bill's FTE authorizations.

Closing Comments

We would like to express our enduring 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 for their tireless commitment to the betterment of Colorado.

Sincerely,

A handwritten signature in black ink, reading "John W. Hickenlooper". The signature is fluid and cursive, with a large initial "J" and a long horizontal stroke at the end.

John W. Hickenlooper
Governor