

# STATE OF COLORADO

## OFFICE OF THE GOVERNOR

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John W. Hickenlooper  
Governor

April 30, 2018

The Honorable Colorado House of Representatives  
Seventy-First 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 18-1322 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, 2018, EXCEPT AS OTHERWISE NOTED.

Approved April 30, 2018 at 1:28 p.m.

The FY 2018-19 budget, along with the expected accompanying legislative package, reflects the spirit of collaboration and compromise among the members of the General Assembly and many other individuals to find agreement on a balanced budget that benefits the entire state. The current economic vibrancy we are experiencing allows us to allocate new resources to several important priorities and initiatives.

Notable highlights include:

- *K-12 Education* — With the anticipated passage of the Public School Finance Act, funding for primary and secondary education will increase with inflation and enrollment over the prior year. In addition, the budget stabilization factor is reduced to \$672.4 million for FY 2018-19, \$150.0 million below the \$822.4 million contained in the FY 2017-18 appropriation. Rural schools will be allocated an additional \$30 million.
- *Higher Education* — The budget provides \$135.1 million total funds (including \$75.7 million General Fund) to limit tuition increases, to increase student supports, and to offer additional financial aid.

- *Nurse Compensation* — The budget includes \$15.4 million total funds to adjust salaries to be more aligned with the market for direct care positions, including registered nurses, at the mental health institutes at Fort Logan and Pueblo. These increases are expected to encourage staff retention, reduce mandatory overtime, and contribute to a safe patient-to-staff ratio. While we are appreciative of the funding provided for our mental health hospitals and ongoing funding for regional centers, the pay for direct care positions is out of alignment at other state 24-hour facilities within the Department of Human Services including Veterans Community Living Centers and Division of Youth Services facilities. We hope that compensation at these facilities can be addressed in future legislative sessions to better serve our most vulnerable citizens.
- *Competency to Stand Trial Evaluations and Restorations* — The mental health institutes have been experiencing an increased demand in court-ordered competency services. A total of \$10.0 million General Fund and 12.9 FTE is included for a variety of initiatives that would help alleviate wait lists, which will also help the Department of Human Services comply with the terms of a settlement agreement. Additionally, \$7.9 million General Fund is set aside for related legislation pending before the legislature, intended to promote systemic change and relieve some of the pressure on the Department to provide inpatient services, which are often not clinically necessary.
- *State Employees* — The budget includes \$59.7 million total funds (including \$33.2 million General Fund) to provide an across the board salary increase of 3.0 percent for state employees. The budget also provides sufficient funding to keep premiums for health, life and dental benefits from increasing in FY 2018-19.
- *Pay for Success* — H.B. 18-1323 provides the Office of State Planning and Budgeting with \$1.4 million total funds in FY 2018-19 (\$6.3 million in total funds over 4 years) to carry out pilot programs with reimbursements partially based on achievement of outcomes. These programs are designed to reduce youth involvement with the justice system, reduce out of home placement of youth, and improve on-time high school graduation rates.

While we applaud these achievements, much work remains in the final days of the legislative session. Several issues remain unfinished that impact the FY 2018-19 budget package and beyond. We stand ready to work with you on the following essential items:

- *Transportation, S.B. 18-001 / H.B. 18-1340* — With additional revenue resulting from the recent federal tax legislation and positive economic conditions, the State has the opportunity to address critical infrastructure needs for Colorado's transportation system. The General Assembly has \$495 million General Fund earmarked for this purpose and we urge bipartisan compromise on this pressing issue.
- *PERA, S.B. 18-200* — The General Assembly is currently considering legislation to make critical reforms to PERA, and \$225 million General Fund is set aside to cover the cost of

these reforms. A solvent pension fund and a solution that is fair to all stakeholders are very much in the State's interest.

- *General Fund Reserve* — As we noted in our April 18, 2018 letter to the Joint Budget Committee, we are requesting to work with the General Assembly on prioritizing an increase to the General Fund reserve. We are pleased that the Joint Budget Committee has started the process. We continue to believe that a 10 percent reserve is a target that should be statutorily required over a reasonable period of years after FY 2018-19. We must take advantage of this opportunity as well as the current economic vibrancy to improve the State's resiliency.
- *Prison Capacity* — In the current budget, utilization targets have been set by the Joint Budget Committee for parole releases, Community Corrections releases, and ISP-I releases. While there is a possibility that these targets would alleviate the need for new prison capacity, current forecasts show that we should be ready for new inmates over the next two years. Additional prison capacity will likely be necessary. Our expectation is for continued attention to this issue from the Executive and Legislative branches. The \$11 million General Fund set aside for these issues must remain intact in case new capacity is needed.

#### Concerns with H.B. 18-1322 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 2018-19 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. 18-1322.

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. 18-1322 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, many footnotes in H.B. 18-1322 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, Executive Branch agencies may deviate from the intent expressed in any footnote as necessary.

Four footnotes included in H.B. 18-1322 are of particular concern to us:

- **Footnote 41, Page 120:** Department of Human Services, Office of Early Childhood, Division of Community and Family Support, Early Childhood Mental Health Services — It is the General Assembly's intent 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. The Department will conduct targeted outreach to each of the CMHCs to encourage their participation in this effort.

- **Footnote 48, Page 121:** Department of Human Services, Office of Self Sufficiency, Special Purpose Welfare Programs, Food Distribution Program — Of this amount, it is the General Assembly's intent that \$500,000 General Fund go to a Colorado-based community foundation as part of the department's responsibilities under Section 26-1-121, C.R.S., to distribute funds to requesting food pantries and food banks, not to exceed \$50,000 per entity per year, such funds to be used for the purchase of Colorado grown foods that meet the Colorado Proud definition and any associated costs, such as transportation and cold storage. This amount is calculated based on the assumption that the Colorado-based community foundation will receive up to 5.0 percent of the total allocation for costs associated with program administration and that entities receiving funds will use no more than 10.0 percent of these funds for indirect costs associated with the purchase of Colorado grown foods including, but not limited to, transportation, refrigeration, and storage.

This footnote attempts to administer the appropriation by directing the allocation of funding to certain entities for purchase of certain products. The Department will consider complying with the intent of the footnote, but will assess how best to administer the funds as it determines its costs for the program and how to best meet the needs of both the Coloradans using the Food Distribution program and community agencies.

- **Footnote 50, Page 121:** Department of Human Services, Office of Behavioral Health, Integrated Behavioral Health Services, Rural Co-occurring Disorder Services — It is the General Assembly's intent that of this appropriation \$1,045,884 cash funds from the Marijuana Tax Cash Fund 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 will first explore contracts with Managed Service Organizations that cover Southern Colorado to provide a full continuum of co-occurring behavioral health treatment services. If this is not feasible, the Department will proceed with a competitive procurement process. While the Department will comply with the intent of this footnote, it cannot guarantee that vendors will respond to its procurement solicitation with satisfactory offers to provide acceptable services in the specified geographical areas.

- **Footnote 91, Page 217:** Department of Public Health and Environment, Administration and Support, Administration, Leave Payouts — It is the intent of the General Assembly that the Department use this line item to pay leave payouts for cash funded and federal funded employees only.

This footnote attempts to administer 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 H.B. 18-1322 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,



John W. Hickenlooper  
Governor

Cc: Representative Millie Hamner, Chair, Joint Budget Committee  
Senator Kent Lambert, Vice-Chair, Joint Budget Committee  
Senator Kevin Lundberg, Joint Budget Committee  
Senator Dominick Moreno, Joint Budget Committee  
Representative Dave Young, Joint Budget Committee  
Representative Bob Rankin, Joint Budget Committee  
Senate President Kevin Grantham  
Speaker of the House of Representatives Crisanta Duran  
Mr. John Ziegler, Joint Budget Committee Staff Director  
Lieutenant Governor and Chief Operating Officer Donna Lynne  
Mr. Patrick Meyers, Chief of Staff, Governor John W. Hickenlooper  
Mr. Henry Sobanet, Director, Governor's Office of State Planning and Budgeting  
Ms. Amy Venturi, Deputy Chief of Staff, Governor John W. Hickenlooper  
Mr. David Padrino, Chief of Staff, Lt. Governor Donna Lynne  
Mr. Kurtis Morrison, Director of Legislative Affairs, Governor John W. Hickenlooper  
Ms. Lauren Lambert, Senior Deputy Director of Legislative Affairs, Governor John W. Hickenlooper  
Ms. Christina Rosendahl, Deputy Director of Legislative Affairs, Governor John W. Hickenlooper  
Mr. Jason Schrock, Deputy Director, Governor's Office of State Planning and Budgeting