

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 6, 2011

The Honorable Colorado Senate
Sixty-Eighth 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 11-209 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, 2011, EXCEPT AS OTHERWISE NOTED.

Approved in part and disapproved in part on May 6, 2011, at 11:14 am *May 6, 2011*

My administration and I thank the General Assembly for the work we did together to balance Colorado's critical priorities during this difficult economic and budgetary time. Senate Bill 11-209 (the "FY 2011-12 Long Bill") and the related supporting legislation implement significant spending reductions in many areas. Still, as new revenues came available, we were able to soften the reductions to K-12 education funding. This budget represents a crucial first step in bridging the structural gap between Colorado's General Fund revenues and expenditures. While our challenges are not yet over, we are encouraged by the collaboration and hard work from all parties involved in the budget process. Our task next year will be difficult, but the framework for a productive process is firmly established.

At the time of this signing, the budget contained in this bill is not yet balanced. To fully balance the budget requires \$70.0 million in General Fund reductions contingent upon the passage of Senate Joint Resolution 11-009 by a two-thirds majority of both chambers of the General Assembly; the final passage of Senate Bill 11-076; the final passage of Senate Bill 11-220; and the final passage of House Bill 11-1257. Nonetheless, the paramount task of the General Assembly is to pass a state budget. Therefore, I am signing Senate Bill 11-209 with the full confidence that the General Assembly will pass these four critical pieces of legislation in the remaining five days of the session. However, if these bills do not pass, my plan will be to restrict appropriations in the budget. Because of the unique nature of these bills, \$48.8 million will be restricted against the General Fund appropriation to the Department of Health Care Policy and Financing, Medical Services Premiums, through a reduction in Medicaid provider rates, not

withstanding Footnote 11 to Senate Bill 11-209. The remainder will be in the General Fund appropriation to the Department of Education, Assistance to Public Schools, State Share of Districts' Total Program Funding.

Additionally, it is the Governor's constitutional obligation to review the general appropriations bill and exercise the line item veto when necessary. While I have approved Senate Bill 11-209 as a whole, I have vetoed certain footnotes within the bill. Pursuant to the Colorado Constitution, I have returned this bill, with my objections, to the Colorado Senate.

With this letter, I am also registering objection to 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). The General Assembly's attempt within Senate Bill 11-209 to appropriate the number of FTE positions within Colorado government constitutes interference with the inherent prerogative of the Executive Branch to administer its appropriations. More importantly, 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, with the clear purpose of encouraging efficiency and effectiveness in State government operations, I am directing Executive Branch agencies to disregard the FTE authorizations within Senate Bill 11-209. I have informed the members of the cabinet instead to manage their operations within the scope of the dollars appropriated in Senate Bill 11-209. By removing perceived limitations on the operational flexibility of the Executive Branch, State agencies will be empowered to make smarter business decisions in the management of their appropriations for personnel. This represents an important first step in reshaping the operations of State government to encourage creativity and efficiency.

With this direction, Executive Branch agencies will continue to monitor the use of FTE throughout FY 2011-12, and will provide the customary details of actual FTE usage in the budget submissions for FY 2012-13 and FY 2013-14.

VETO AND COMMENTS ON FOOTNOTES

Article IV, Section 12 of the Colorado Constitution allows me to exercise line item vetoes on the general appropriations bill (the "Long Bill"). I have exercised this power to veto certain portions of the FY 2011-12 Long Bill that do not meet with my approval.

A number of footnotes violate Article III and/or Article V of the Colorado Constitution. Article III provides separation of powers between the executive and legislative branches. While the legislative branch has the authority to appropriate state funds, the executive branch has the inherent responsibility and authority to administer state funds. Therefore, the legislature may not attach conditions in the Long Bill that intrude into the administration of state government. See *Colorado General Assembly v. Owens*, 136 P.3d 262 (Colo. 2006), which holds that "the legislature 'may not attach conditions to a general appropriations bill which purport to reserve to the legislature powers of close supervision that are essentially executive in character.'"; see also *Anderson v. Lamm*, 195 Colo. 437, 579 P.2d 620 (1978); *Colorado Genreal Assembly v. Lamm*,

704 P.2d 1371 (Colo. 1985). Furthermore, Article V, section 32 of the Colorado Constitution prohibits the legislature from including substantive legislation in the Long Bill. (*Colorado General Assembly v. Owens*, 136 P. 3d at 266; *Colorado General Assembly v. Lamm*, 704 P. 2d at 1382)

The executive department cannot abide by legislative directives which are in violation of the Colorado Constitution. Therefore I have lined through the following items:

- 1. Footnote 7, Page 36:** Department of Education, Assistance to Public Schools, Public School Finance, State Share of Districts' Total Program Funding -- It is the intent of the General Assembly that the Department of Education be authorized to utilize up to \$4,647,614 of this appropriation to fund qualified students designated as Accelerating Students Through Concurrent Enrollment (ASCENT) Program participants as authorized pursuant to Section 22-35-108, C.R.S. This amount is calculated based on an estimated 753 participants funded at a rate of \$6,172.13 per FTE pursuant to Section 22-54-104 (4.7), C.R.S.

I am vetoing this footnote, but am also directing the Department to comply with its intent. This footnote violates the separation of powers in Article III of the Colorado Constitution by attempting to administer the appropriation. While I fully support the utilization of funding for qualified students to participate in the ASCENT program, this attempt to place an upper limit on ASCENT expenditures constitutes an exercise in the powers of close supervision of appropriations, which inherently belong to the executive.

- 2. Footnote 8, Page 36:** Department of Education, Assistance to Public Schools, Public School Finance, State Share of Districts' Total Program Funding -- Of the amount appropriated for this line item, a portion, not to exceed \$250,000 for fiscal year 2011-12, shall be transferred to the Legislative Council for the purpose of funding the biennial cost of living analysis pursuant to Section 22-54-104 (5) (c) (III) (B), C.R.S.

I am vetoing this footnote, but am also directing the Department to comply with its intent. This footnote violates the separation of powers in Article III of the Colorado Constitution by attempting to administer the appropriation. Recognizing the importance of this biennial cost of living analysis, however, I am directing the Department to make an appropriate transfer to the Legislative Council for the purpose of funding this study.

- 3. Footnote 9, Page 36:** 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 \$200,000 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.

I am vetoing this footnote, but am also directing the Department to comply with its intent. This footnote violates the separation of powers in Article III of the Colorado Constitution by attempting to administer the appropriation. While I fully support the utilization of appropriate levels of funding to provide reading services for

the blind, this attempt to specify the use of appropriations constitutes an exercise of the powers of close supervision of appropriations, which inherently belong to the executive.

4. **Footnote 23, Page 92:** 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.

I am vetoing this footnote, but am also directing the Department to comply with its intent. This footnote violates the separation of powers in Article III of the Colorado Constitution by attempting to administer the appropriation. While I fully support the utilization of appropriate levels of funding to implement and expand family- and community-based services for adolescents, this attempt to specify the use of appropriations constitutes an exercise of the powers of close supervision of appropriations, which inherently belong to the executive.

5. **Footnote 28, Page 93:** Department of Human Services, Services for People with Disabilities, Community Services for People with Developmental Disabilities, Other Community Programs, Preventive Dental Hygiene -- The purpose of this appropriation is to assist the Colorado Foundation of Dentistry in providing special dental services for persons with developmental disabilities.

I am vetoing this footnote because it clearly violates the separation of powers in Article III of the Colorado Constitution by attempting to administer the appropriation. This footnote stipulates that an appropriation of \$63,051 within the Department be directed to a specific not-for-profit dental care provider. This constitutes an exercise of the powers of close supervision of appropriations, which inherently belong to the executive.

6. **Footnote 32, Page 93:** Department of Human Services, Division of Youth Corrections, Community Programs, Purchase of Contract Placements -- The appropriation in this line item is calculated based on the assumption that secure facilities operated by the Division will house youth at 110 percent of capacity, consistent with historic practice.

I am vetoing this footnote because it clearly violates the separation of powers in Article III of the Colorado Constitution by attempting to administer the appropriation. This footnote stipulates the General Assembly's intention that the Division of Youth Corrections overcrowd its facilities to 110% of their capacity. This constitutes an exercise of the powers of close supervision of appropriations, which inherently belong to the executive.

7. **Footnote 48a, Page 148:** Department of Personnel and Administration, Division of Human Resources, Employee Benefits Services -- It is the intent of the General Assembly that the Department shall submit to the Joint Budget Committee the projected premium increases for State and employee contributions for employee group benefits for the

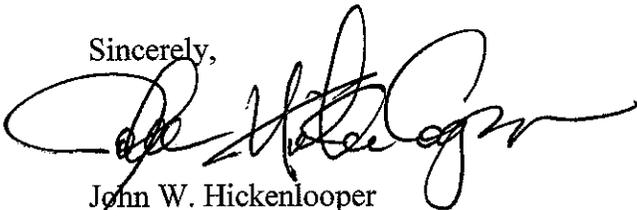
upcoming fiscal year. The information shall be submitted in time to be considered as a part of the Joint Budget Committee staff's annual total compensation recommendations for the upcoming fiscal year.

I am vetoing this footnote, but am also directing the Department to comply with its intent to the extent feasible. This footnote violates the separation of powers in Article III of the Colorado Constitution by dictating the format and content of the Executive budget submission. Nevertheless, I do recognize the critical importance of providing complete and timely information to the Joint Budget Committee and its permanent staff. I am therefore directing the Department to ensure that this information reaches the Committee in sufficient time for the Committee's staff to perform thorough and constructive review.

- 8. Footnote 52, Page 201:** Department of Revenue, Enforcement Business Group, Limited Gaming Division -- It is the intent of General Assembly that the Department of Revenue shall not spend more than 5.0 percent of Amendment 50 revenues for administrative expenses of the Limited Gaming Division.

I am vetoing this footnote because it clearly violates the separation of powers in Article III of the Colorado Constitution by attempting to administer the appropriation. This footnote stipulates the General Assembly's intention that the Department of Revenue limit the proportion of Amendment 50 revenues expended by the Limited Gaming Division for administrative purposes. This constitutes an exercise of the powers of close supervision of appropriations, which inherently belong to the executive. In addition, this footnote may violate Article V, Section 32 of the Colorado Constitution because it constitutes substantive legislation that cannot be included in the general appropriations bill.

Sincerely,



John W. Hickenlooper
Governor