STATE OF COLORADO

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Bill Owens
Governor

May 2, 2005

The Honorable Colorado Senate

Sixty-Fifth General Assembly
First Regular Session
State Capitol Building
Denver, CO 80203

Ladies and Gentlemen:

I am filing with the Secretary of State the following act:

SENATE BILL 05-209, 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, 2005, EXCEPT AS OTHERWISE NOTED.

Approved in part and disapproved in part on May 2, 2005, at 10:53 a.m

It is my constitutional obligation to review the general appropriations bill and exercise the line item veto when necessary. While I have approved Senate Bill 05-209 (the "FY 2005-06 Long Bill") as a whole, I have vetoed headnotes and footnotes within the bill. Pursuant to the Colorado Constitution, I have filed copies of the vetoed items from this bill, with my objections, with the Secretary of State.

This year's budget provides for a very conservative 4.0 percent General Fund increase. However, some of the details of the budget plan illuminate the continuing fiscal constraints that hamper our ability to complete our recovery from the recent recession. Most notably, the budget includes only $116 million in new General Fund dollars to the State, yet mandated spending increases in education and Medicaid alone amount to $285 million. Mandates are consuming more than double our new dollars. With this new budget, over the past five fiscal years, the General Fund has grown an average of 3.3 percent, one third less than the 4.8 percent allowable under TABOR.

This is fiscal reality. It also underscores why I felt it was so important to reach a bipartisan agreement to stabilize our budget – and refer that agreement to Colorado voters this year.

One important note of caution: A budget observer casually reading this plan could falsely believe the budget is spending approximately $500 million more than it does. This is because Colorado is entering the first fiscal year under our landmark College Opportunity Fund program, which provides aid to colleges in the form of individual grants to eligible students. In this first year, these dollars are counted twice: first as a General Fund appropriation and a second time as income for the institutions. This accounting necessity, which double counts nearly $500 million, will not be repeated; however I believe it is important to draw attention to an aspect of the budget that might be confusing.

This budget is clearly the most complicated in recent memory and was made possible by the confluence of a number of one-time events that have negatively impacted the perceived change in spending. Recently identified computer errors and over-refunds allowed the State to save money collected in FY 2004-05 for use in FY 2005-06. Just as families save money in one year for expenses in the next, the majority of the funds for next year's budget are being collected in FY 2004-05. Separately, I am pleased that the General Assembly is planning for an Unemployment Insurance tax credit that will both help businesses and the State's budget.

Meanwhile, I am concerned that the budget relies on legislative changes that are still in the process. In particular, it relies on $17.7 million from House Bills 05-1196 and 05-1262 and Senate Bill 05-176, none of which has been passed. Furthermore, I have yet to decide whether I support House Bill 05-1196, which refinances $8.9 million of General Fund in the Department of Revenue with off-the-top monies from the Highway Users' Tax Fund. While I understand the rationale behind the balancing mechanisms, it is unfortunate that the General Assembly has relied so heavily on transportation monies to balance this budget.

Despite these concerns, the paramount task of the General Assembly is to pass a budget. Therefore, I am signing Senate Bill 05-209, with noted line item vetoes. The following text explains my vetoes to the Long Bill.

VETO AND COMMENT ON HEADNOTES AND 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 full discretion with regard to the items I choose to veto. I have exercised this power to veto certain portions of the FY 2005-2006 Long Bill that do not meet with my approval.

I vetoed a number of headnotes and footnotes that violate Article III and/or Article V of the 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. Anderson v. Lamm, 579 P.2d 620 (Colo. 1978); Colorado General Assembly v. Lamm, 704 P.2d 1371 (Colo. 1985). I have vetoed provisions that go beyond appropriating funds and infringe on the executive authority. The Denver District Court recently upheld the executive's authority to veto the following headnotes upon finding that these "headnotes are an attempt by the legislature to invade the executive's function in administering funds." Colorado General Assembly v. Owens, C.A. no. 03 CV 3700 (D.C. Denver, Colo., filed Sept. 29, 2004). The Colorado Supreme Court has accepted jurisdiction to review the validity of the line-item vetoes and the constitutional issues regarding separation of powers and substantive legislation.

Article V, Section 32 prohibits the legislature from including substantive legislation in the Long Bill. Anderson; Colorado General Assembly. The executive department cannot abide by legislative directives that are in violation of the Colorado Constitution. Accordingly, I have vetoed provisions of substantive legislation in the Long Bill.

Many of the headnote and footnote vetoes provided below are identical to the vetoes I exercised in prior Long Bills, and I exercised this power for the same reasons.

I have lined through the following items, thereby vetoing these provisions:

SECTION 1: HEADNOTES

1. **Section 1. Definitions – general provisions, headnote (1), pages 1-2:** (1) (a) "Capital outlay" means: (I) Equipment, furniture, motor vehicles, software, and other items that have a useful life of one year or more and that cost less than fifty thousand dollars; (II) Alterations and replacements, meaning major and extensive repair, remodeling, or alteration of buildings, the replacement thereof, or the replacement and renewal of the plumbing, wiring, electrical, fiber optic, heating, and air conditioning systems therein, costing less than fifteen thousand dollars; (III) New structures, meaning the construction of entirely new buildings where the cost will be less than fifteen thousand dollars, including the value of materials and labor, either state-supplied or supplied by contract; (IV) Nonstructural

improvements to land, meaning the grading, leveling, drainage, irrigation, and landscaping thereof and the construction of roadways, fences, ditches, and sanitary and storm sewers, where the cost will be less than five thousand dollars. (b) "Capital outlay" does not include those things defined as capital construction by section 24-75-301, Colorado Revised Statutes.

I vetoed this headnote last year. This headnote interferes with the ability of the executive branch to administer appropriations as provided by Article III of the Colorado Constitution. It is important to preserve the executive authority to administer appropriations in order to allow effective management of the state's business and of the current fiscal situation. In order to provide flexibility for departments to administer the appropriations when providing services to citizens, I am vetoing this headnote. Furthermore, this provision represents substantive legislation and as such is in violation of Article V, Section 32 of the Colorado Constitution. In addition, the dollar amounts listed in this headnote have not been changed since 1977. I will direct the departments to comply with the headnote to the extent feasible, however, to the extent that this headnote hinders the ability of departments to meet the needs of citizens, they will be allowed to spend outside of these definition parameters, provided that such spending will remain within the line item appropriation provided by the General Assembly. Because this headnote violates one or more articles of the state constitution, the headnote and its references are constitutionally void.

2. **Section 1. Definitions – general provisions, headnote (3), pages 2-3:** (3) (a) (I) Except as otherwise provided in paragraph (b) of this subsection, "full time equivalent" or "FTE" means the budgetary equivalent of one permanent position continuously filled full time for an entire fiscal year by elected state officials or by state employees who are paid for at least two thousand eighty hours per fiscal year, with adjustments made to: (A) Include in such time computation any sick, annual, administrative, or other paid leave; and (B) Exclude from such time computation any overtime or shift differential payments made in excess of regular or normal hours worked and any leave payouts upon termination of employment. (II) "Full time equivalent" or "FTE" does not include contractual, temporary, or permanent seasonal positions. (III) As used in this paragraph (a), "state employee" means a person employed by the state, whether or not such person is a classified employee in the state personnel system. (b) For purposes of higher education professional personnel and assistants in resident instruction and professional personnel in organized research and activities relating to instruction, "full time equivalent" or "FTE" means the equivalent of one permanent position continuously filled for a nine-month or ten-month academic year. (c) The maximum limitation on the number of FTE that are allowed for the fiscal year to which this act pertains may comprise any combination of part-time positions or full-time positions so long as the maximum FTE limitation is not exceeded.

I vetoed this headnote last year. The Colorado Supreme Court concluded in 1978 that legislative attempts to administer the appropriation by placing "specific staffing and resource allocation decisions" in a general appropriations bill were unconstitutional. Anderson v. Lamm, 195 Colo. 437, 579 P.2d 620 (1978). The Supreme Court in so doing recognized that the ability to make staffing decisions is one of the most fundamental components of managing state government. Therefore,

this headnote and its references are constitutionally void. Such a headnote inhibits the executive branch's authority to administer the appropriation and is thus unconstitutional. Furthermore, this provision represents substantive legislation and as such is in violation of Article V, Section 32 of the Colorado Constitution.

3. **Section 1. Definitions – general provisions, headnote (4), page 3:** (4) "Health, life, and dental" means the state contribution for group benefits plans pursuant to section 24-50-609, Colorado Revised Statutes. Pursuant to section 24-50-104 (4) (d) (II) and section 24-50-609 (2) (b) (II), Colorado Revised Statutes, the state of Colorado shall contribute an amount necessary to pay two hundred nine dollars and seventy-eight cents per month per single employee, three hundred forty-six dollars and seventy-nine cents per month per employee with one or more children, three hundred fifty-seven dollars and two cents per month per employee and spouse, and four hundred eighty-eight dollars and seven cents per employee and family per month for each employee enrolled in a group benefit plan that includes enrollment in medical benefits. In accordance with section 24-50-104 (4) (d) (II), Colorado Revised Statutes, these contribution amounts shall be effective from July 1, 2005 until June 30, 2006.

   I vetoed this headnote last year. This headnote interferes with the ability of the executive branch to administer appropriations as provided by Article III of the Colorado Constitution. It is important to preserve the executive authority to administer appropriations in order to allow effective management of the state's business. In order to provide flexibility for departments to administer the appropriations when providing services to citizens, I am vetoing this headnote. I will direct the departments to comply with the headnote to the extent feasible, however, to the extent that this headnote hinders the ability of departments to meet the needs of citizens, they will be allowed to spend outside of these definition parameters, provided that such spending will remain within the line item appropriation provided by the General Assembly. Furthermore, this provision represents substantive legislation and as such is in violation of Article V, Section 32 of the Colorado Constitution. Because this headnote violates one or more articles of the state's constitution, the headnote and its references are constitutionally void.

4. **Section 1. Definitions – general provisions, headnote (6), page 4:** (6) "Lease purchase" means the use and acquisition of equipment under an agreement to purchase, pursuant to which payments are made for a period of longer than one year and are subject to annual appropriation. "Lease purchase" may also include payments made under the agreement for the maintenance of the equipment. No funds shall be expended for lease purchases except those specifically appropriated for such purpose. The provisions of this subsection (6) shall not apply to the board of regents of the university of Colorado; the state board of agriculture; the board of trustees of the Colorado school of mines; the board of trustees of the university of northern Colorado; the trustees of the state colleges in Colorado; the state board for community colleges and occupational education (except for administration and the division of occupational education); the board for the Auraria higher education center; the state historical society; the Colorado council on the arts; the division of wildlife; the water conservation board; the county departments of social services; and the low-income energy assistance block grant.

I vetoed this headnote last year. This headnote unconstitutionally interferes with the ability of the executive branch to administer appropriations as provided by Article III of the Colorado Constitution. It is important to preserve the executive authority to administer appropriations in order to allow effective management of the state's business. In order to provide flexibility for departments to administer the appropriations when providing services to citizens, I am vetoing this headnote. I will direct the departments to comply with the headnote to the extent feasible, however, to the extent that this headnote hinders the ability of departments to meet the needs of citizens, they will be allowed to spend outside of these definition parameters, provided that such spending will remain within the line item appropriation provided by the General Assembly. Furthermore, this provision represents substantive legislation and as such is in violation of Article V, Section 32 of the Colorado Constitution. Because this headnote violates one or more articles of the state's constitution, the headnote and its references are constitutionally void.

5. **Section 1. Definitions – general provisions, headnote (7), page 4:** (7) "Leased space" means the use and acquisition of office facilities and office and parking space pursuant to a rental agreement. No funds shall be expended for leased space except pursuant to a specific appropriation for such purpose. The provisions of this subsection (7) shall not apply to the board of regents of the university of Colorado; the state board of agriculture; the board of trustees of the Colorado school of mines; the board of trustees of the university of northern Colorado; the trustees of the state colleges in Colorado; the state board for community colleges and occupational education (except for administration and the division of occupational education); the board for the Auraria higher education center; the state historical society; the Colorado council on the arts; the division of wildlife; the water conservation board; the county departments of social services; and the low-income energy assistance block grant.

   I vetoed this headnote last year. This headnote interferes with the ability of the executive branch to administer appropriations as provided by Article III of the Colorado Constitution. It is important to preserve the executive authority to administer appropriations in order to allow effective management of the state's business. In order to provide flexibility for departments to administer the appropriations when providing services to citizens, I am vetoing this headnote. I will direct the departments to comply with the headnote to the extent feasible, however, to the extent that this headnote hinders the ability of departments to meet the needs of citizens, they will be allowed to spend outside of these definition parameters, provided that such spending will remain within the line item appropriation provided by the General Assembly. Furthermore, this provision represents substantive legislation and as such is in violation of Article V, Section 32 of the Colorado Constitution. Because this headnote violates one or more articles of the state's constitution, the headnote and its references are constitutionally void.

6. **Section 1. Definitions, – general provisions, headnote (8), pages 4-5:** (8) (a) "Legal services" means the purchase of legal services from the department of law; however, up to ten percent of the amount appropriated for legal services may instead be expended for operating expenses, contractual services, and tuition for employee training. No funds shall be expended for legal services except those specifically appropriated for such purpose. The

provision of this subsection (8) shall not apply to the departments of education, higher education, transportation, and the risk management fund in the department of personnel. (b) "Payments to private counsel" means the purchase of legal services from any individual or entity other than the department of law. No funds shall be expended for payments to private counsel except those specifically appropriated for such purposes.

I vetoed this headnote last year. This headnote interferes with the ability of the executive branch to administer appropriations as provided by Article III of the Colorado Constitution. Legal services expenditures are not discretionary in protecting the interest of the state and its citizens. Limiting the departments' ability to expend funds for these services would result in ineffective administration of the government. However, I recognize the need to contain state expenditures for legal services. I will instruct the departments to use all necessary restraint in legal service expenditures and to provide an accurate annual accounting of all legal expenditures to the Joint Budget Committee. Furthermore, this provision represents substantive legislation and as such is in violation of Article V, Section 32 of the Colorado Constitution. Because this headnote violates one or more articles of the state's constitution, the headnote and its references are constitutionally void.

7. **Section 1. Definitions – general provisions, headnote (10), pages 5-6:** (10) "Operating expenses" means: (a) Supplies and materials, meaning items that by their nature are consumable and that have a useful life of less than one year or that, after usage, undergo an impairment of, or a material change in, physical condition, including, but not limited to, books, periodicals, and educational, laboratory, medical, data processing, custodial, postal, office, photographic, and road maintenance supplies and materials; (b) Current charges, meaning charges for items or services not otherwise defined in this section for which a separate appropriation is not made, including, but not limited to, charges for utilities, trash removal, custodial services, telecommunications, data processing, advertising, freight, rentals of equipment and property, storage, parking, minor repair or maintenance, and printing and reproduction, and insurance premiums, dues, subscriptions, casualty losses, commissions, royalties, interest, fees, fines, reimbursements, litigation-related expenses to the department of law for individual cases that exceed five hundred dollars, and payments of prizes, awards, and judgments other than to state employees as compensation; except that no funds appropriated for operating expenses may be expended for vehicle lease payments, leased space, or lease purchase unless otherwise authorized by law; (c) Capital outlay, as defined in subsection (1) of this section. (d) The cost of travel by common carrier or by state-owned or privately owned conveyance and the costs of meals and lodging incident to such travel.

I vetoed this headnote last year. This headnote interferes with the ability of the executive branch to administer appropriations as provided by Article III of the Colorado Constitution. It is important to preserve the executive authority to administer appropriations in order to allow effective management of the state's business. In order to provide flexibility for departments to administer the appropriations when providing services to citizens, I am vetoing this headnote. I will direct the departments to comply with the headnote to the extent feasible, however, to the extent that this headnote hinders the ability of departments to meet the needs of citizens, they will be allowed to spend outside of these definition parameters,

provided that such spending will remain within the line item appropriation provided by the General Assembly. Furthermore, this provision represents substantive legislation and as such is in violation of Article V, Section 32 of the Colorado Constitution. Because this headnote violates one or more articles of the state's constitution, the headnote and its references are constitutionally void.

8. **Section 1. Definitions – general provisions, headnote (11), page 6:** (11) "Personal services" means: (a) All salaries and wages, whether to full-time, part-time, or temporary employees of the state, and also includes the state's contribution to the public employees' retirement fund and the state's share of federal Medicare tax paid for state employees. Payments for overtime shall be in compliance with rules and procedures adopted by the state personnel director. (b) Professional services, meaning services requiring advanced study in a specialized discipline that are rendered or performed by firms or individuals for the state other than for employment compensation as an employee of the state, including but not limited to accounting, consulting, architectural, engineering, physician, nurse, specialized computer, and construction management services. Such services shall not include the provision of legal services for the department of law or to a private attorney or law firm. Payments for professional services shall be in compliance with section 24-30-202 (2) and (3), Colorado Revised Statutes. (c) Temporary services, meaning clerical, administrative, and casual labor rendered or performed by firms or individuals for the state other than for employment compensation as an employee of the state. Payments for temporary services shall be in compliance with section 24-30-202 (2) and (3), Colorado Revised Statutes. (d) Tuition, meaning payments for graduate or undergraduate courses taken by state employees at institutions of higher education. (e) Payments for unemployment insurance as required by the department of labor and employment.

   I vetoed this headnote last year. This headnote interferes with the ability of the executive branch to administer appropriations as provided by Article III of the Colorado Constitution. It is important to preserve the executive authority to administer appropriations in order to allow effective management of the state's business. In order to provide flexibility for departments to administer the appropriations when providing services to citizens, I am vetoing this headnote. I will direct the departments to comply with the headnote to the extent feasible, however, to the extent that this headnote hinders the ability of departments to meet the needs of citizens, they will be allowed to spend outside of these definition parameters, provided that such spending will remain within the line item appropriation provided by the General Assembly. Furthermore, this provision represents substantive legislation and as such is in violation of Article V, Section 32 of the Colorado Constitution. Because this headnote violates one or more articles of the state's constitution, the headnote and its references are constitutionally void.

9. **Section 1. Definitions – general provisions, headnote (12), page 6:** (12) "Purchase of services from computer center" means the purchase of automated data processing services from the general government computer center.

   I vetoed this headnote last year. This headnote interferes with the ability of the executive branch to administer appropriations as provided by Article III of the Colorado Constitution. It is important to preserve the executive authority to

administer appropriations in order to allow effective management of the state's business. In order to provide flexibility for departments to administer the appropriations when providing services to citizens, I am vetoing this headnote. I will direct the departments to comply with the headnote to the extent feasible, however, to the extent that this headnote hinders the ability of departments to meet the needs of citizens, they will be allowed to spend outside of these definition parameters, provided that such spending will remain within the line item appropriation provided by the General Assembly. Furthermore, this provision represents substantive legislation and as such is in violation of Article V, Section 32 of the Colorado Constitution. Because this headnote violates one or more articles of the state's constitution, the headnote and its references are constitutionally void.

10. **Section 1. Definitions – general provisions, headnote (13), pages 6-7:** (13) "Short-term disability" means the state contribution for employee short-term disability pursuant to section 24-50-603, Colorado Revised Statutes. No funds appropriated for short-term disability shall be expended for any other purpose.

    I vetoed this headnote last year. This headnote interferes with the ability of the executive branch to administer appropriations as provided by Article III of the Colorado Constitution. It is important to preserve the executive authority to administer appropriations in order to allow effective management of the state's business. In order to provide flexibility for departments to administer the appropriations when providing services to citizens, I am vetoing this headnote. I will direct the departments to comply with the headnote to the extent feasible, however, to the extent that this headnote hinders the ability of departments to meet the needs of citizens, they will be allowed to spend outside of these definition parameters, provided that such spending will remain within the line item appropriation provided by the General Assembly. Furthermore, this provision represents substantive legislation and as such is in violation of Article V, Section 32 of the Colorado Constitution. Because this headnote violates one or more articles of the state's constitution, the headnote and its references are constitutionally void.

11. **Section 1. Definitions – general provisions, headnote (14), page 7:** (14) "Utilities" means water, sewer service, electricity, payments to energy service companies, purchase of energy conservation equipment, and all heating fuels.

    I vetoed this headnote last year. This headnote interferes with the ability of the executive branch to administer appropriations as provided by Article III of the Colorado Constitution. It is important to preserve the executive authority to administer appropriations in order to allow effective management of the business of the state. In order to provide flexibility for departments to administer the appropriations when providing services to citizens, I am vetoing this headnote. I will direct the departments to comply with the headnote to the extent feasible, however, to the extent that this headnote hinders the ability of departments to meet the needs of citizens, they will be allowed to spend outside of these definition parameters, provided that such spending will remain within the line item appropriation provided by the General Assembly. Furthermore, this provision represents substantive legislation and as such is in violation of Article V, Section 32 of the Colorado

Constitution. Because this headnote violates one or more articles of the state's constitution, the headnote and its references are constitutionally void.

12. **Section 1. Definitions – general provisions, headnote (15), page 7:** (15) "Vehicle lease payments" means the annual payments to the department of personnel for the cost of administration, repayment of a loan from the state treasury, and lease-purchase payments for new and replacement vehicles. No funds shall be expended for vehicle lease payments except those specifically appropriated for such purposes. The provisions of this subsection (15) shall not apply to the departments of education, higher education, and transportation.

    I vetoed this headnote last year. This headnote interferes with the ability of the executive branch to administer appropriations as provided by Article III of the Colorado Constitution. It is important to preserve the executive authority to administer appropriations in order to allow effective management of the state's business. In order to provide flexibility for departments to administer the appropriations when providing services to citizens, I am vetoing this headnote. I will direct the departments to comply with the headnote to the extent feasible, however, to the extent that this headnote hinders the ability of departments to meet the needs of citizens, they will be allowed to spend outside of these definition parameters, provided that such spending will remain within the line item appropriation provided by the General Assembly. Furthermore, this provision represents substantive legislation and as such is in violation of Article V, Section 32 of the Colorado Constitution. Because this headnote violates one or more articles of the state's constitution, the headnote and its references are constitutionally void.

13. **Section 1. Definitions – general provisions, headnote (16), page 7:** (16) "Multiuse Network Payments" means payments to the Department of Personnel and Administration for the cost of administration and the use of the state's telecommunications network. No funds appropriated for multiuse network payments shall be expended for any other purpose.

    I vetoed this headnote last year. This headnote interferes with the ability of the executive branch to administer appropriations as provided by Article III of the Colorado Constitution. It is important to preserve the executive authority to administer appropriations in order to allow effective management of the state's business. In order to provide flexibility for departments to administer the appropriations when providing services to citizens, I am vetoing this headnote. I will direct the departments to comply with the headnote to the extent feasible, however, to the extent that this headnote hinders the ability of departments to meet the needs of citizens, they will be allowed to spend outside of these definition parameters, provided that such spending will remain within the line item appropriation provided by the General Assembly. Furthermore, this provision represents substantive legislation and as such is in violation of Article V, Section 32 of the Colorado Constitution. Because this headnote violates one or more articles of the state's constitution, the headnote and its references are constitutionally void.

14. **Section 1. Definitions– general provisions, headnote (19), page 7:** (19) Where no purpose is specified or where a special program is specified, the appropriation shall be for

contractual services, tuition, and operating expenses and, only if the appropriation includes a specified FTE limitation, for personal services other than contractual services.

I vetoed this last year. This headnote interferes with the ability of the executive branch to administer appropriations as provided by Article III of the Colorado Constitution. It is important to preserve the executive authority to administer appropriations in order to allow effective management of the state's business. In order to provide flexibility for departments to administer the appropriations when providing services to citizens, I am vetoing this headnote. I will direct the departments to comply with the headnote to the extent feasible, however, to the extent that this headnote hinders the ability of departments to meet the needs of citizens, they will be allowed to spend outside of these definition parameters, provided that such spending will remain within the line item appropriation provided by the General Assembly. Furthermore, this provision represents substantive legislation and as such is in violation of Article V, Section 32 of the Colorado Constitution. Because this headnote violates one or more articles of the state's constitution, the headnote and its references are constitutionally void.

15. **Section 1. Definitions– general provisions, headnote (21), pages 7-8:** (21) When it is not feasible, due to the format of this act, to set forth fully in the line item description the purpose of an item of appropriation or a condition or limitation on the item of appropriation, the footnotes at the end of each section of this act refer to provisions which set forth such purposes, conditions, or limitations, and such provisions are therefore intended to be binding portions of the items of appropriation to which they relate. In other cases, where clearly expressed, footnotes refer to statements which are not intended by the general assembly to be binding portions of appropriations but which are related to the indicated item or items of appropriation. Such nonbinding statements include explanations of the assumptions used in making appropriations, the general assembly's intent with respect to future appropriations, and requests on the part of the general assembly for particular administrative action in connection with items of appropriation.

I vetoed this headnote last year. This headnote indicates that footnotes refer to provisions which set forth purpose, conditions, or limitations regarding the appropriation and states that provisions are therefore intended to be "binding portions" of the items of appropriations to which they relate. Any footnote that interferes with the ability of the executive branch to administer appropriations as provided by Article III of the Colorado Constitution is invalid. Any footnote that constitutes substantive legislation is in violation of Article V, Section 32 of the Colorado Constitution. I will consider such footnotes to be advisory, not binding.

SECTION 2: FOOTNOTES

1. **Footnote 1, page 18:** Department of Agriculture, Commissioner's Office and Administrative Services, Indirect Cost Assessment -- It is the intent of the General Assembly that the Department utilize this line item to track indirect cost assessments provided through federal grants received by the Commissioner's Office in both actual and appropriated fiscal years.

This footnote is in violation of the Colorado Constitution, Article III and possibly Article V, Section 32, because it interferes with the ability of the executive branch to administer the appropriation and may constitute substantive legislation that cannot be included in the general appropriations bill. Furthermore, the General Assembly has no authority to appropriate federal money.

2. **Footnote 2, page 18:** Department of Agriculture, Agricultural Services Division, Personal Services; and Operating Expenses -- The Department is requested to submit a report to the Joint Budget Committee by November 1, 2005, which summarizes options for reducing personal services and operating expenses related to programs administered by Inspection and Consumer Services. This report should include strategies for extending risk-based time frames, comparisons to programs in other states, statutory changes necessary to implement potential cost savings, and possible consequences of reduced funding and FTE.

   This footnote is in violation of the Colorado Constitution, Article III and possibly Article V, Section 32, because it interferes with the ability of the executive branch to administer the appropriation and may constitute substantive legislation that cannot be included in the general appropriations bill. I will instruct the department to comply to the extent feasible.

3. **Footnote 3, page 18:** Department of Agriculture, Special Purpose, Wine Promotion Board -- The Department is requested to submit a report to the Joint Budget Committee by November 1, 2005, which summarizes the methods that other states use to promote locally produced wines, the size of promotional budgets, and the potential effect of reducing taxes earned under section 12-47-503, C. R. S.

   This footnote is in violation of the Colorado Constitution, Article III and possibly Article V, Section 32, because it interferes with the ability of the executive branch to administer the appropriation and may constitute substantive legislation that cannot be included in the general appropriations bill. I will instruct the department to comply to the extent feasible.

4. **Footnote 4, pages 19, 35, 46, 55, 70, 85, 114, 134, 142, 149, 152, 161, 166, 180, 196, 224, 239, 248, 261, 265, 269, 272:** All Departments, Totals -- Every department is requested to submit to the Joint Budget Committee information on the number of additional federal and cash funds exempt FTE associated with any federal grants or private donations that are applied for or received during FY 2005-06. The information should include the number of FTE, the associated costs (such as workers' compensation, health and life benefits, need for additional space, etc.) that are related to the additional FTE, the direct and indirect matching requirements associated with the federal grant or donated funds, the duration of the grant, and a brief description of the program and its goals and objectives.

   I vetoed this footnote last year. This footnote violates the separation of powers in Article III of the Colorado Constitution in that it is attached to federal funds and private donations, which are not subject to legislative appropriation. Placing information requirements on such funds could constitute substantive legislation in the general appropriations bill in violation of Article V, Section 32 of the Colorado

Constitution. In addition, this footnote is an unfunded mandate in that it would require a significant devotion of resources.

5. **Footnote 6, pages 35-36, 115, 134-135, 240:** Department of Corrections, Management, Executive Director's Office Subprogram; Department of Human Services, Mental Health and Alcohol and Drug Abuse Services, Alcohol and Drug Abuse Division; and Division of Youth Corrections; Judicial Department, Probation and Related Services; and Department of Public Safety, Division of Criminal Justice -- State agencies involved in multi-agency programs requiring separate appropriations to each agency are requested to designate one lead agency to be responsible for submitting a comprehensive annual budget request for such programs to the Joint Budget Committee, including prior year, request year, and three-year forecasts for revenues into the fund and expenditures from the fund by agency. The requests should be sustainable for the length of the forecast based on anticipated revenues. Each agency is still requested to submit its portion of such request with its own budget document. This applies to requests for appropriation from the Drug Offender Surcharge Fund, the Sex Offender Surcharge Fund, the Persistent Drunk Driver Cash Fund, and the Alcohol and Drug Driving Safety Fund, among other programs.

   I vetoed this footnote last year. This footnote violates the separation of powers in Article III of the Colorado Constitution by dictating the format of the executive budget submission. In addition, this footnote may violate Article V, Section 32 because it constitutes substantive legislation that cannot be included in the general appropriations bill. I will instruct the departments to comply to the extent feasible.

6. **Footnote 7, page 36:** Department of Corrections, Management, External Capacity Subprogram, Payments to House State Prisoners -- It is the intent of the General Assembly that the appropriations made for payments to private facilities housing state inmates be used exclusively for the purpose of per diem payments. It is the intent of the General Assembly that the department not withhold funds from the per diem payments to cover major medical expenses incurred by state inmates assigned to private facilities. It is the intent of the General Assembly that appropriations made in the medical services subprogram are sufficient to cover major medical expenses incurred by state inmates held in both state and private facilities.

   I vetoed a similar footnote last year. This footnote violates the separation of powers in Article III of the Colorado Constitution by attempting to administer the appropriation. In addition, this footnote may violate Article V, Section 32 because it constitutes substantive legislation that cannot be included in the general appropriations bill. It is my hope that the Department of Corrections will be able to fund all medical services for the department out of the line item appropriation for medical services for inmates. However, the State is required to provide these medical services and a request for additional funding may occur.

7. **Footnote 7a, page 36:** Department of Corrections, Management, External Capacity Subprogram, Payments to House State Prisoners -- It is the intent of the General Assembly that the Department of Corrections have the authority to transfer up to $299,825 General Fund from the "Payments to private prisons at a rate of $50.28 per inmate per day" line item, if funds are available at the end of the fiscal year. The funds may be transferred to the "Payments to local jails at a rate of $47.42 per inmate per day" line item to offset the $2.72 difference in the jail

reimbursement rate and the average daily cost per inmate of $50.14 per inmate per day. The Department of Corrections shall reimburse the counties based on their respective pro rata share of inmate days.

This footnote violates the separation of powers in Article III of the Colorado Constitution by attempting to administer the appropriation, and may violate Article V, Section 32 because it constitutes substantive legislation that cannot be included in the general appropriations bill. I will instruct the department to work with the Office of State Planning and Budgeting to address any potential reversion associated with this line item.

8. **Footnote 7b, page 36:** Department of Corrections, Management, External Capacity Subprogram, Payments to House State Prisoners, Payments to local jails at a rate of $47.42 per inmate day -- It is the intent of the General Assembly that the Department of Corrections, representatives of Colorado Counties, Inc., and the County Sheriffs of Colorado, Inc. develop a rate setting methodology for county jail reimbursement that shall include, but not be limited to, the average cost to house a DOC inmate in a county jail and the cost of providing specialized program services to an inmate such as medical and dental care, mental health or substance abuse treatment services, anger management, education, and job skills training. The Department is requested to submit a report to the Joint Budget Committee by October 15, 2005, that contains recommendations concerning the rate setting process.

This footnote violates the separation of powers in Article III of the Colorado Constitution by attempting to administer the appropriation, and may violate Article V, Section 32 because it constitutes substantive legislation that cannot be included in the general appropriations bill. I will instruct the department to comply to the extent feasible.

9. **Footnote 8, page 36:** Department of Corrections, Institutions, Utilities Subprogram, Utilities -- The Department of Corrections is requested to continue the energy management program designed to reduce overall energy consumption in the department's facilities. Up to $100,000 of the Department's utility appropriation may be for this program and a portion of these funds may be used to hire the equivalent of 1.0 FTE as an energy management program manager. The Department is requested to submit with its annual budget document a detailed accounting of any savings achieved as a result of the program and a summary of funds used to hire the 1.0 FTE.

I vetoed this footnote last year. This footnote violates the separation of powers in Article III of the Colorado Constitution by attempting to administer the appropriation. According to a 1978 court case, the General Assembly has no authority to appropriate or prescribe limits on FTE. In addition, this footnote may violate Article V, Section 32 because it constitutes substantive legislation. I will instruct the department and the controller to follow the legislative intent of the footnote to the extent feasible.

10. **Footnote 8a, pages 36-37:** Department of Corrections, Institutions, Mental Health Subprogram -- The Department of Corrections is requested to submit a report to the General Assembly, by October 15, 2005, on the feasibility of developing and implementing a pilot program designed to provide intensive mental health treatment services to inmates prior to their

parole. The report is requested to include summary data that demonstrates the need for such a program, including the number and percentage of inmates released who are severely mentally ill. The report should also include preliminary cost estimates for a 50-bed residential treatment program, with recommendations for how the program should be structured and the steps that should be taken to implement the program, including any statutory changes that may be necessary. The Department is requested to submit the report to the Joint Budget Committee, the Audit Committee, the Joint Judiciary Committee, and the Joint Committee on Health and Human Services.

This footnote violates the separation of powers in Article III of the Colorado Constitution by attempting to administer the appropriation, and may violate Article V, Section 32 because it constitutes substantive legislation that cannot be included in the general appropriations bill. I will instruct the department to comply.

11. **Footnote 10, page 46:** Department of Education, Assistance to Public Schools, Public School Finance -- The Department is requested to provide to the Joint Budget Committee, on or before November 1, 2005, information concerning the number of students that repeated a grade level in the 2004-05 school year, and the share of districts' total program costs associated with these students. The Department is requested to summarize the information by grade level, by school district, and by type of instructional program.

    I vetoed this footnote last year. This footnote violates the separation of powers in Article III of the Colorado Constitution by attempting to administer the appropriation, and may violate Article V, Section 32 because it constitutes substantive legislation that cannot be included in the general appropriations bill. I will instruct the department to comply to the extent feasible.

12. **Footnote 11, page 47:** Department of Education, Assistance to Public Schools, Public School Finance; and School for the Deaf and the Blind, School Operations -- The Department is requested to work with the Board of Trustees of the Colorado School for the Deaf and the Blind and report to the Joint Budget Committee and the Senate and House of Representatives Education Committees by November 1, 2005, concerning the implementation of section 22-80-102 (4), C. R. S. The report is requested to include information concerning the status of any: (a) Intergovernmental agreements between the School and local school districts or other local governmental agencies; (b) partnerships with boards of cooperative services; and (c) charter schools chartered by the Board of Trustees. In addition, the report is requested to include information concerning the estimated state and local fiscal impact of any such agreements.

    I vetoed this footnote last year. This footnote violates the separation of powers in Article III of the Colorado Constitution by attempting to administer the appropriation, and may violate Article V, Section 32 because it constitutes substantive legislation that cannot be included in the general appropriations bill. I will instruct the department to comply to the extent feasible.

13. **Footnote 14, page 47:** Department of Education, Assistance to Public Schools, Public School Finance, State Share of Districts' Total Program Funding -- The Department is requested to provide to the Joint Budget Committee, on or before November 1, 2005, information concerning the Colorado preschool program. The information provided is requested to include

the following for fiscal year 2004-05: (a) A list of participating districts; (b) the funded pupil count (FTE) allocated to each participating district and a description regarding how such allocation was determined; (c) data reflecting the ratio of each district's funded pupil count for the preschool program to its funded pupil count for kindergarten; (d) data indicating the number of three-year-old children that participated in each district's preschool program; (e) data indicating the number of children that participated in each district's preschool program for a full-day rather than a half-day; (f) data indicating the number of preschool program FTE each district used to provide a full-day kindergarten component; (g) the state and local shares of each district's total program funding that is attributable to the preschool program; and (h) whether or not each district contracted for preschool services with community providers.

I have vetoed similar footnotes in each of the past three years. This footnote violates the separation of powers in Article III of the Colorado Constitution by attempting to administer the appropriation. Additionally, this footnote may violate Article V, Section 32 because it constitutes substantive legislation. I will instruct the department to comply to the extent feasible.

14. **Footnote 15, pages 47-48, 85:** Department of Education, Assistance to Public Schools, Categorical Programs; and Department of Higher Education, Division of Occupational Education, Colorado Vocational Act Distributions pursuant to Section 23-8-102, C. R. S. -- The Department of Education is requested to work with the Department of Higher Education and to provide to the Joint Budget Committee information concerning the distribution of funds available for each categorical program for state fiscal year 2004-05. For grant programs, such information is requested to include the following: (a) The total number and dollar amount of requests received; (b) the amount awarded or distributed to each district, board of cooperative services, or administrative unit; and (c) a description of the criteria utilized to evaluate requests and to determine grant awards. For other programs, such information is requested to include the following: (a) The total amount distributed to each district, board of cooperative services, or administrative unit; (b) the total amount that each entity would be eligible to receive pursuant to state law and/or State Board of Education rule; and (c) a description of the method or formula used to determine the amount for which entities are eligible and to distribute funds.

I have vetoed similar footnotes in each of the past three years. This footnote violates the separation of powers in Article III of the Colorado Constitution by attempting to administer the appropriation. In addition, this footnote may violate Article V, Section 32 because it constitutes substantive legislation. I will instruct the departments to comply to the extent feasible.

15. **Footnote 16, page 48:** Department of Education, Assistance to Public Schools, Categorical Programs, Other Categorical Programs, Federal Special Education Grant for Infants, Toddlers, and Their Families -- The Department is requested to provide to the Joint Budget Committee information concerning the expenditure of federal funds provided pursuant to Part C of the federal "Individuals with Disabilities Education Act" for the most recent state fiscal year. Such information is requested to include sufficient detail to identify expenditures related to the provision of direct services, by type of service.

I have vetoed similar footnotes in each of the past three years. The General Assembly has no authority to appropriate these federal funds. Furthermore, this footnote may violate Article V, Section 32 because it constitutes substantive

legislation. In addition, the footnote is not clear as to what time period the request relates and may require a significant devotion of resources. I will instruct the department to comply to the extent feasible.

16. **Footnote 17, pages 48, 115:** Department of Education, Assistance to Public Schools, Categorical Programs, Other Categorical Programs, Federal Special Education Grants for Infants, Toddlers, and Their Families; and Department of Human Services, Services for People with Disabilities, Developmental Disability Services, Services for Children and Families, Program Funding -- The Department of Human Services is requested to provide an accurate count of the numbers of persons waiting for state-supported early intervention services as part of the annual report required to be submitted pursuant to section 27-10.5-103(d), C.R.S., that is fulfilled through the Department's budget request and quarterly management reports. The Department of Human Services, in conjunction with the Department of Education, is specifically requested to provide, by November 1, 2005, the number of children who are in need of state early intervention funding based on the funding hierarchy established by the Departments of Human Services and Education; this should include a break-out of the number of children receiving services through local government and federal Part C funding and, to the extent known to the Departments, the number receiving no services.

    This footnote violates the separation of powers in Article III of the Colorado Constitution by attempting to administer the appropriation, and may violate Article V, Section 32 because it constitutes substantive legislation that cannot be included in the general appropriations bill. Additionally, this footnote requires a substantial dedication of resources and constitutes an unfunded mandate. I will instruct the departments to comply to the extent feasible.

17. **Footnote 18, page 48:** Department of Education, Assistance to Public Schools, Grant Programs and Other Distributions -- The Department is requested to provide information to the Joint Budget Committee by November 1, 2005, concerning the allocation of funding to eligible boards of cooperative services (BOCES) pursuant to section 22-2-122 (3), C.R.S. Specifically, the Department is requested to detail the sources of funds and the allocations made to each BOCES in fiscal year 2004-05.

    I vetoed a similar footnote last year. This footnote violates the separation of powers in Article III of the Colorado Constitution by attempting to administer the appropriation, and may violate Article V, Section 32 because it constitutes substantive legislation that cannot be included in the general appropriations bill. I will instruct the department to comply to the extent feasible.

18. **Footnote 19, page 48:** Department of Education, Assistance to Public Schools, Grant Programs and Other Distributions, State Public School Fund, Contingency Reserve -- The Department is requested to notify the Joint Budget Committee whenever the State Board of Education approves a payment from the Contingency Reserve. Such notification is requested to include the amount of the payment, the name of the district receiving funds, the proposed use of such funds, and the applicable circumstance listed in section 22-54-117, C. R. S.

    I vetoed this footnote last year. This footnote violates the separation of powers in Article III of the Colorado Constitution by attempting to direct elected officials in

their duties. In addition, this footnote may violate Article V, Section 32 because it constitutes substantive legislation. I will direct the department to comply to the extent feasible.

19. **Footnote 20, page 49:** Department of Education, Assistance to Public Schools, Grant Programs and Other Distributions, State Public School Fund, Contingency Reserve -- It is the intent of the General Assembly that the State Board of Education utilize the assistance of the Division of Property Taxation in the Department of Local Affairs in making a determination of school district requests for payment from the contingency reserve fund prior to approving payments from the fund.

    I vetoed this footnote last year. This footnote is in violation of the Colorado Constitution, Article III and possibly Article V, Section 32, because it interferes with the ability of the executive branch to administer the appropriation and may constitute substantive legislation that cannot be included in the general appropriations bill. In addition, this footnote violates the separation of powers in Article III of the Colorado Constitution by attempting to direct elected officials in their duties.

20. **Footnote 20a, page 49:** 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 $150,000 of this appropriation be used to continue providing access to radio and television broadcasts of locally published and produced materials, and $40,000 of this appropriation be used to provide telephone access to digital transmissions of nationally published and produced materials.

    This footnote is in violation of the Colorado Constitution, Article III and possibly Article V, Section 32, because it interferes with the ability of the executive branch to administer the appropriation and may constitute substantive legislation that cannot be included in the general appropriations bill. I will direct the department to comply to the extent feasible.

21. **Footnote 22, page 55:** Governor - Lieutenant Governor - State Planning and Budgeting, Office of the Governor; and Office of State Planning and Budgeting -- As part of the FY 2006-07 budget submission, the Office of State Planning and Budgeting is requested to provide a report on indirect cost recoveries from federal programs that are administered through the Office of the Governor or that are not shown elsewhere in the Long Bill. The report should include an analysis, by federal program, of: Statewide and departmental indirect costs collected in FY 2003-04 and FY 2004-05; where funds collected were spent; the potential for additional indirect cost collections in FY 2005-06 and future years; and the potential for offsetting General Fund expenditures in the Office of the Governor or other departments through these collections. For each federal program that was not assessed statewide and departmental indirect costs, the report should explain why these costs were not assessed.

    I vetoed this footnote last year. This footnote is in violation of the Colorado Constitution, Article III and possibly Article V, Section 32, because it interferes with the ability of the executive branch to administer the appropriation, dictates the content and format of the executive budget request, and may constitute substantive

legislation that cannot be included in the general appropriations bill. The General Assembly has no authority to appropriate federal funds. Furthermore, the Governor's Office is already part of the statewide indirect cost plan developed by the Department of Personnel; thus provision of this information would be redundant.

22. **Footnote 23, page 55:** Governor - Lieutenant Governor - State Planning and Budgeting, Office of the Governor, Governor's Office, Administration of Governor's Office and Residence; and Other Programs and Grants -- The Governor's Office is requested to provide to the Joint Budget Committee, with its FY 2006-07 budget request, information pertaining to federal and cash exempt funds received and expected to be received. This information should include the amount and source of each grant, any matching and maintenance of effort requirements, duration of the grant, as well as the name of the program or project and number of FTE the funds will support.

    I vetoed this footnote last year. This footnote violates the separation of powers in Article III of the Colorado Constitution by attempting to administer the appropriation and by dictating the content of the executive budget request. Requesting additional information on non-appropriated sources within the Governor's Office restricts the flexibility of the Office. Furthermore, the General Assembly has no authority to appropriate federal money or to prescribe limits on FTE. In addition, this footnote may violate Article V, Section 32 because it constitutes substantive legislation that cannot be included in the general appropriations bill.

23. **Footnote 24, pages 55-56, 196:** Governor - Lieutenant Governor - State Planning and Budgeting, Office of State Planning and Budgeting; and Department of Personnel and Administration, Division of Human Resources, Human Resource Services -- The Department of Personnel and Administration shall comply with the statutory provisions of section 24-50-110 (1)(d), C.R.S., and is requested to provide other state departments with the information necessary to comply with this statute. The Office of State Planning and Budgeting and the Department of Personnel and Administration are requested to work with the departments to improve the timeliness and accuracy of information about state personnel. Improvements, at a minimum, should include: updating personnel information on a centralized computerized data base; accurate reporting of filled FTE positions; number of reclassifications that are approved, turnover rates by agency; tracking of FTE positions funded to FTE positions filled; an accurate count of part-time and temporary FTE positions; and elimination of unused FTE positions. The Department of Personnel and Administration and the Office of State Planning and Budgeting are requested to submit a consolidated statewide personnel report to the General Assembly by September 1, 2005. This report should include, by line item and department, a summary of vacant positions, the length of time each position has been vacant, and the number of reclassifications that were approved in FY 2004-05.

    I vetoed this footnote last year. This footnote is in violation of the Colorado Constitution, Article III and possibly Article V, Section 32, because it interferes with the ability of the executive branch to administer the appropriation and may constitute substantive legislation that cannot be included in the general appropriations bill. For the last six years, my administration has worked diligently to provide the Joint Budget Committee (JBC) with information on FTE within existing resources. My administration has provided the JBC with more information on FTE than any prior

administration and will continue to work cooperatively with the JBC. However, the full amount of information requested in this footnote is not available and to make this information available would require significant investments in computer technology and human resources. Without these investments, the footnote constitutes an unfunded mandate. I will continue to direct representatives from the Governor's Office and the Department of Personnel and Administration to provide the requested information to the extent feasible given available data and resource constraints.

24. **Footnote 26, page 56:** Governor - Lieutenant Governor - State Planning and Budgeting, Office of State Planning and Budgeting -- The Commission on Information Management, in conjunction with the Office of State Planning and Budgeting, is requested to submit a priority list for all state information technology projects in the FY 2006-07 budget requests by November 1, 2005.

    I vetoed this footnote last year. This footnote is in violation of the Colorado Constitution, Article III and possibly Article V, Section 32, by attempting to administer the appropriation and by dictating the content of the executive budget request, and may constitute substantive legislation that cannot be included in the general appropriations bill. The Office of State Planning and Budgeting does not review budget requests from elected officials, the legislative branch, or the judicial branch. I will direct the Office of State Planning and Budgeting, in conjunction with the Office of Innovation and Technology, to prioritize the information technology requests of the executive branch departments according to programmatic priorities and to provide this report to the JBC by November 2005. However, I will not require the offices to prioritize non-executive requests in this list.

25. **Footnote 27, page 56:** Governor - Lieutenant Governor - State Planning and Budgeting, Office of State Planning and Budgeting; and Office of Innovation and Technology -- The General Assembly requests the Office of State Planning and Budgeting and the Office of Innovation and Technology to work with Joint Budget Committee staff and departmental staff to develop recommendations for standardizing Long Bill information technology appropriations in order to achieve consistency in long bill appropriations for information technology. The Office of State Planning and Budgeting and the Office of Innovation and Technology are requested to report their recommendations for such a system to the General Assembly no later than November 1, 2005.

    I vetoed this footnote last year. This footnote violates the separation of powers in Article III of the Colorado Constitution by directing the appropriation. In addition, this footnote may violate Article V, Section 32 because it constitutes substantive legislation that cannot be included in the general appropriations bill.

26. **Footnote 28, page 56:** Governor - Lieutenant Governor - State Planning and Budgeting, Economic Development Programs, International Trade Office -- The International Trade Office is requested to provide its FY 2004-05 annual report to the Joint Budget Committee by November 1, 2005. The report should include the following information: Number of new and

existing companies assisted; activity reports from overseas representatives and offices; number of incoming missions; and regional export activities.

I vetoed this footnote last year. This footnote is in violation of the Colorado Constitution, Article III and possibly Article V, Section 32, because it interferes with the ability of the executive branch to administer the appropriation and may constitute substantive legislation that cannot be included in the general appropriations bill. Additionally, this footnote requires a substantial dedication of resources and constitutes an unfunded mandate. Nonetheless, I will direct the department to comply to the extent feasible.

27. **Footnote 29, page 57:** Governor - Lieutenant Governor - State Planning and Budgeting, Economic Development Programs, Colorado Promotion - Other Program Costs -- This program is requested to submit to the Joint Budget Committee a report outlining how it spent the $9,000,000 supplemental appropriation it received in FY 2002-03, and a cost-benefit analysis of such expenditures. It is requested that this report be provided January first of each fiscal year until the appropriation is accounted for.

I vetoed this footnote last year. This footnote is in violation of the Colorado Constitution, Article III and possibly Article V, Section 32, because it interferes with the ability of the executive branch to administer the appropriation and may constitute substantive legislation that cannot be included in the general appropriations bill. Additionally, this footnote requires a substantial dedication of resources and constitutes an unfunded mandate. Nonetheless, I will direct the department to comply.

28. **Footnote 30, page 57:** Governor - Lieutenant Governor - State Planning and Budgeting, Economic Development Programs, Economic Development Commission - General Economic Incentives and Marketing -- In its annual report to the General Assembly, the Economic Development Commission is requested to provide an analysis and summary of programs and activities undertaken to assist the economies of rural areas of the state. For each project in a rural area, the report should include the following information: The location; recipient; purpose; dollar amount received from the Commission; local and/or private matching contributions; and other economic development assistance provided by the state for that project, such as job training. The report should also provide the total dollar amount provided by the Commission to rural areas, the percentage of total Commission assistance that went to rural areas, and information on any rural projects that applied for but did not receive Commission assistance.

I vetoed this footnote last year. This footnote is in violation of the Colorado Constitution, Article III and possibly Article V, Section 32, because it interferes with the ability of the executive branch to administer the appropriation and may constitute substantive legislation that cannot be included in the general appropriations bill. Pursuant to Section 24-46-104 (2), C.R.S., the department is required to prepare a report regarding the work of the Commission. The department has complied with this statutory requirement and will continue to provide the report. Furthermore, I have long emphasized to the Economic Development Commission the importance of

rural economic development and will continue to do so. I will direct the department to comply to the extent feasible.

29. **Footnote 31, pages 57, 86:** Governor - Lieutenant Governor - State Planning and Budgeting, Economic Development Programs, Colorado First Customized Job Training; and Department of Higher Education, Division of Occupational Education, Colorado First Customized Job Training -- This program is requested to submit to the Joint Budget Committee by November 1, 2005, a detailed plan for accountability, including review criteria for selection of companies to participate; the number of new jobs created by the programs, the number of unemployed and underemployed individuals who were trained and employed by this program, the amount of new personal income, state personal, and corporate income tax generated by this program, the time period for repayment of state investment in this program, and the number of persons taken off state support programs and the money saved thereby.

    I vetoed this footnote last year. This footnote is in violation of the Colorado Constitution, Article III and possibly Article V, Section 32, because it interferes with the ability of the executive branch to administer the appropriation and may constitute substantive legislation that cannot be included in the general appropriations bill. Furthermore, this footnote requires a substantial dedication of resources and constitutes an unfunded mandate.

30. **Footnote 33, page 71:** Department of Health Care Policy and Financing, Executive Director's Office, Payment Error Rate Measurement Program -- Both the Medicaid Prescription Drug Program Performance Audit (September 2004) and Medicaid Claims Performance Audit (December 2004) identified circumstances where the Department was over paying providers for Medicaid Services. In addition, the Centers for Medicare and Medicaid Services will require that the states enact payment error rate measurement programs by October 1, 2005. In order to improve the accuracy of Medicaid payments, the General Assembly provides this appropriation for a statistical sampling of billing claims for the Medicaid and Children's Basic Health Plan program to ensure that proper reimbursement payments are made. It is the intent of the General Assembly that a portion of the cost of this contract be paid from a reduction in claims payments from the Medical Services Premiums line item either through recoupment of overpayments or through system changes that correct improper billing amounts before the claims are paid. Therefore, beginning January in 2006, the Department is requested to provide the Joint Budget Committee with a quarterly report providing information on the number of claims reviewed, the payment error rate associated with those claims, and the amount of any funding, if any, recouped from implemented corrective actions.

    This footnote is in violation of the Colorado Constitution, Article III, because it interferes with the ability of the executive branch to administer the appropriation. In addition, this footnote may violate Article V, Section 32 because it constitutes substantive legislation that cannot be included in the general appropriations bill. I will direct the department to comply to the extent feasible.

31. **Footnote 34, page 71:** Department of Health Care Policy and Financing, Medical Services Premiums -- The Department is requested to submit a report on the managed care organizations' capitation rates for each population and the estimated blended rate for each aid category in effect for fiscal year 2005-06 to the Joint Budget Committee by July 25, 2005. The Department is requested to include in the report a copy of each managed care organization's

certification that the reimbursement rates are sufficient to assure the financial stability of the managed care organization with respect to delivery of services to the medicaid recipients covered in their contract pursuant to Section 26-4-114 (2) (k), C.R.S.

I vetoed this footnote last year. This footnote is in violation of the Colorado Constitution, Article III and possibly Article V, Section 32, because it interferes with the ability of the executive branch to administer the appropriation and may constitute substantive legislation that cannot be included in the general appropriations bill.

32. **Footnote 37, page 72:** Department of Health Care Policy and Financing, Medical Services Premiums -- The calculations of this line item include $7,365,778 for a 2.0 percent rate increase for inpatient hospital services provided to Medicaid clients. It is the intent of the General Assembly that the Medical Services Board adopt rules that increase each individual hospital's Medicaid reimbursement rate by 2.0 percent for inpatient hospital services provided to Medicaid clients. The Department is also requested to provide a report to the Joint Budget Committee by August 1, 2005, on the status of the rules adopted by Medical Services Board regarding this rate increase.

This footnote is in violation of the Colorado Constitution, Article III and possibly Article V, Section 32, because it interferes with the ability of the executive branch to administer the appropriation and may constitute substantive legislation that cannot be included in the general appropriations bill.

33. **Footnote 39, page 72:** Department of Health Care Policy and Financing, Medical Services Premiums -- The calculations for this line item include $6,831,445 for a reimbursement rate increase for primary care physicians. It is the intent of the General Assembly that the Medical Services Board adopt rules to gradually increase reimbursement rates for the top five physician procedure codes up to eighty percent of the Medicare rate. The Department is requested to provide a report to the Joint Budget Committee by August 1, 2005, on the status of the rules adopted by the Medical Services Board regarding this rate increase. The Department is requested to provide information in the report regarding which procedure codes have been increased to eighty percent of the Medicare reimbursement rate and which procedure codes are still below the eighty percent threshold and what the costs would be to increase those rates.

This footnote is in violation of the Colorado Constitution, Article III and possibly Article V, Section 32, because it interferes with the ability of the executive branch to administer the appropriation and may constitute substantive legislation that cannot be included in the general appropriations bill. I will direct the department to comply to the extent feasible.

34. **Footnote 40, page 72:** Department of Health Care Policy and Financing, Medical Services Premiums -- The calculations for this line item include $4,669,275 for a 2.0 percent rate increase for home-and-community-based waiver services, private duty nursing services, and home health services. It is the intent of the General Assembly that the Medical Services Board adopt rules to conform to this appropriation. The Department is also requested to provide a report to the Joint Budget Committee by August 1, 2005, on the status of the rules adopted by Medical Services Board regarding this rate increase.

This footnote is in violation of the Colorado Constitution, Article III and possibly Article V, Section 32, because it interferes with the ability of the executive branch to administer the appropriation and may constitute substantive legislation that cannot be included in the general appropriations bill.

35. **Footnote 41, page 72:** Department of Health Care Policy and Financing, Medical Services Premiums -- The Department is requested to report on current reimbursement rates for home health providers. Specifically, the Department is requested to provide information whether a separate reimbursement structure should be used if the provider of the home health services lives in the same residence as the client receiving the service. The Department is requested to provide information on whether any state or federal regulations would prohibit the state from developing a two-tiered rate reimbursement system for a home health agency based on whether their employee is providing care to a client within the same residence. This report is requested to be provided to the Joint Budget Committee by no later than November 1, 2005.

    This footnote is in violation of the Colorado Constitution, Article III and possibly Article V, Section 32, because it interferes with the ability of the executive branch to administer the appropriation and may constitute substantive legislation that cannot be included in the general appropriations bill. I will direct the department to comply to the extent feasible.

36. **Footnote 45, page 73:** Department of Health Care Policy and Financing, Other Medical Services, Services for 4,829 Old Age Pension State Medical Program clients at an average cost of $2,225.82 -- The Department is requested to submit a report by November 1, 2005 recommending changes to benefit structure or eligibility criteria for the Old Age Pension State Medical Program in order to stay within the appropriation limit of $10,750,000 for this program. The report should include the most recent five year expenditure history for the different medical services categories used by this population.

    I vetoed a similar footnote last year. This footnote is in violation of the Colorado Constitution, Article III and possibly Article V, Section 32, because it interferes with the ability of the executive branch to administer the appropriation and may constitute substantive legislation that cannot be included in the general appropriations bill. I will direct the department to comply to the extent feasible.

37. **Footnote 46a, pages 73-74, 115:** Department of Health Care Policy and Financing, Department of Human Services Medicaid-Funded Programs, Office of Information Technology Services-Medicaid Funding, Colorado Benefits Management System; Department of Human Services, Office of Information Technology Services, Colorado Benefits Management System (CBMS) -- It is the intent of the General Assembly that any change requests or change orders identified by either the private sector audit or the audit commissioned by the Legislative Audit Committee be submitted by the departments to the Commission on Information Management for review and comment.

    This footnote violates the separation of powers in Article III of the Colorado Constitution by attempting to administer the appropriation. In addition, this footnote may violate Article V, Section 32 because it constitutes substantive legislation that cannot be included in the general appropriations bill.

38. **Footnote 46b, pages 74, 116:** Department of Health Care Policy and Financing, Department of Human Services Medicaid-Funded Programs, Office of Information Technology Services-Medicaid Funding, Colorado Benefits Management System; and Department of Human Services, Office of Information Technology Services, Colorado Benefits Management System (CBMS) -- The Department of Health Care Policy and Financing and the Department of Human Services shall submit a single report to the General Assembly by June 1, 2005, with an estimated date when CBMS will be fully operable. Included in such report shall be an estimate of the additional costs to make the system fully operable, a detailed description of the system's capabilities upon completion, a detailed analysis of appropriations to date, and system repairs or system development from these appropriations. This report shall also contain information on the State's contractual obligations with the developer of the system, including information on when the contract was signed and when the contract was amended.

    This footnote violates the separation of powers in Article III of the Colorado Constitution by attempting to administer the appropriation. In addition, this footnote may violate Article V, Section 32 because it constitutes substantive legislation that cannot be included in the general appropriations bill. I will direct the departments to comply to the extent feasible.

39. **Footnote 49, page 86:** Department of Higher Education, Colorado Commission on Higher Education, Administration, Financial Aid Research for the General Assembly -- The Department is requested to submit a report to the Joint Budget Committee by November 1, 2005, comparing the retention rates of students receiving Governor's Opportunity Scholarships with retention rates for low-income students receiving other types of financial aid packages.

    I vetoed this footnote last year. This footnote is in violation of the Colorado Constitution, Article III and possibly Article V, Section 32, by attempting to administer the appropriation and may constitute substantive legislation that cannot be included in the general appropriations bill. However, I will direct the department to comply with the intent of the footnote to the extent possible.

40. **Footnote 50, page 86:** Department of Higher Education, Colorado Commission on Higher Education, Administration, Financial Aid Research for the General Assembly -- The Department is requested to submit a report to the Joint Budget Committee by November 1 each year documenting the base level of institutional financial aid at each institution and demonstrating that at least 20 percent of any increase in undergraduate resident tuition revenues in excess of inflation is being devoted to need-based financial assistance pursuant to section 23-18-202 (3) (c), C.R.S.

    This footnote is in violation of the Colorado Constitution, Article III and possibly Article V, Section 32, because it interferes with the ability of the executive branch to administer the appropriation and may constitute substantive legislation that cannot be included in the general appropriations bill. In addition, FY 2004-05 would be the first fiscal year that the data requested in the footnote would be available. The requirement cited in Section 23-18-202 (3)(c), C.R.S. only applies to higher education institutions that have qualified as enterprises pursuant to Section 23-5-101.7, C.R.S. In FY 2004-05, only one higher education governing board qualified as an enterprise and would therefore be required to allocate 20 percent of any

increase in undergraduate resident tuition revenues above inflation. As a result, while I am vetoing this footnote, I am directing any institutions and/or governing boards that qualified as enterprises during FY 2004-05 to comply to the extent possible with the intent of the footnote and provide the Colorado Commission on Higher Education a report.

41. **Footnote 53, pages 87, 116:** Department of Higher Education, Colorado Commission on Higher Education Financial Aid, Special Purpose, Early Childhood Professional Loan Repayment Program; and Department of Human Services, Division of Child Care, Early Childhood Professional Loan Repayment Program -- It is the intent of the General Assembly that no more than 10 percent of all expenditures from this line item shall be for program administration.

    I vetoed a similar footnote last year. This footnote is in violation of the Colorado Constitution, Article III and possibly Article V, Section 32, because it interferes with the ability of the executive branch to administer the appropriation and may constitute substantive legislation that cannot be included in the general appropriations bill. However, I will direct the department to comply with the intent of the footnote.

42. **Footnote 58, page 116:** Department of Human Services, Division of Child Welfare -- The Department is requested to provide to the Joint Budget Committee, by November 1, 2005, information concerning the gross amount of payments to child welfare service providers, including amounts that were paid using revenues other than county, state, or federal tax revenues. The Department is requested to identify amounts, by source, for the last two actual fiscal years.

    I vetoed this footnote last year. This footnote violates the separation of powers in Article III of the Colorado Constitution by attempting to administer the appropriation, and may violate Article V, Section 32 because it constitutes substantive legislation that cannot be included in the general appropriations bill. I will instruct the department to comply with the intent of the footnote.

43. **Footnote 59, pages 116-117:** Department of Human Services, Division of Child Welfare, Child Welfare Services -- The Department is requested to provide to the Joint Budget Committee, by November 1, 2005, information concerning actual expenditures for the last two fiscal years for services that are now funded through this consolidated line item. Such data should include the following: (a) Program services expenditures and the average cost per open involvement per year; (b) out-of-home placement care expenditures and the average cost per child per day; and (c) subsidized adoption expenditures and the average payment per child per day.

    I vetoed this footnote last year. This footnote violates the separation of powers in Article III of the Colorado Constitution by attempting to administer the appropriation, and may violate Article V, Section 32 because it constitutes substantive legislation that cannot be included in the general appropriations bill. I will instruct the department to comply with the intent of the footnote.

44. **Footnote 62, page 117:** Department of Human Services, Division of Child Welfare, Family and Children's Programs -- It is requested that $3,825,000 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 vetoed this footnote last year. This footnote violates the separation of powers in Article III of the Colorado Constitution by attempting to administer the appropriation. In addition, this footnote may violate Article V, Section 32 because it constitutes substantive legislation that cannot be included in the general appropriations bill. I will instruct the department to comply with the intent of the footnote.

45. **Footnote 65, page 118:** Department of Human Services, Office of Self Sufficiency, Colorado Works Program, County Block Grants -- Pursuant to sections 26-2-714 (7) and 26-2-714 (9), C.R.S., under certain conditions, a county may transfer federal Temporary Assistance for Needy Families (TANF) funds within its Colorado Works Program Block Grant to the federal child care development fund or to programs funded by Title XX of the federal Social Security Act. One of the conditions specified is that the amount a county transfers must be specified by the Department of Human Services as being available for transfer within the limitation imposed by federal law. It is the intent of the General Assembly that the Department allow individual counties to transfer a greater percent of federal TANF funds than the state is allowed under federal law as long as: (a) Each county has had an opportunity to transfer an amount up to the federal maximum allowed; and, (b) the total amount transferred statewide does not exceed the federal maximum.

I vetoed this footnote last year. This footnote may violate Article V, Section 32 because it constitutes substantive legislation that cannot be included in the general appropriations bill by specifying conditions when individual counties are to transfer a greater percent of federal TANF funds than the State is allowed under federal law. Furthermore, this footnote violates the separation of powers in Article III of the Colorado Constitution by attempting to administer the appropriation. I will instruct the department to comply with the intent of the footnote to the extent feasible.

46. **Footnote 66, page 118:** Department of Human Services, Office of Self Sufficiency, Colorado Works Program, County Training -- The Department is requested to utilize a portion of the funding provided through this line item, in addition to other available resources, for the purpose of providing technical assistance and training for county staff concerning requirements of the federal Americans with Disabilities Act and the provision of services to special needs populations.

I vetoed this footnote last year. This footnote violates the separation of powers in Article III of the Colorado Constitution by attempting to administer the appropriation. In addition, this footnote may violate Article V, Section 32 because it constitutes substantive legislation that cannot be included in the general appropriations bill.

47. **Footnote 67, page 118:** Department of Human Services, Mental Health and Alcohol and Drug Abuse Services, Administration, Personal Services -- It is the intent of the General Assembly that the Department utilize this appropriation for personal services for its salaries and other

related personal services costs and that the Department not bill these expenses to any program line items.

This footnote violates the separation of powers in Article III of the Colorado Constitution by attempting to administer the appropriation. This footnote impacts the department's ability to accurately charge indirect costs; I will direct the department not to comply.

48. **Footnote 68a, pages 118-119:** Department of Human Services, Mental Health and Alcohol and Drug Abuse Services, Alcohol and Drug Abuse Services, Community Programs, Treatment Services, Treatment and Detoxification Contracts -- The Alcohol and Drug Abuse Services Division is encouraged to develop a Short- Term Intensive Residential Remediation Treatment (STIRRT) Therapeutic Community Interventions program in Southern Colorado and $400,000 of the additional General Fund dollars appropriated is requested to be used to develop the Therapeutic Community Interventions model for women's STIRRT in southern Colorado.

This footnote is in violation of the Colorado Constitution, Article III and possibly Article V, Section 32, because it interferes with the ability of the executive branch to administer the appropriation and may constitute substantive legislation that cannot be included in the general appropriations bill.

49. **Footnote 69, page 119:** Department of Human Services, Mental Health and Alcohol and Drug Abuse Services, Mental Health Community Programs, Mental Health Services for the Medically Indigent, Services for 6,981 Indigent Mentally Ill Clients -- Funding for this line item includes $15,371,195 General Fund and $5,698,088 federal funds, including $5,209,448 from the federal mental health block grant. It is the intent of the General Assembly that this money be used solely as a direct services pass-through to community mental health centers.

This footnote is in violation of the Colorado Constitution, Article III and possibly Article V, Section 32, because it interferes with the ability of the executive branch to administer the appropriation and may constitute substantive legislation that cannot be included in the general appropriations bill. In addition, federal funds allow departments to charge indirect costs for administrative expenses, and state statutes encourage this practice.

50. **Footnote 70, page 119:** Department of Human Services, Mental Health and Alcohol and Drug Abuse Services, Mental Health Community Programs, Goebel Lawsuit, Goebel Lawsuit Settlement -- The Department is requested to report on the status of the court order and state compliance. The Department is also requested to provide a report detailing any programmatic changes that will be necessary once the state is no longer governed by a court order, including but not limited to changes in categorizing expenditures pursuant to federal funds indicated by the Centers for Medicare and Medicaid Services and changes in service modality to improve outcome measures. This report is requested to be provided to the Joint Budget Committee by no later than November 1, 2005.

This footnote is in violation of the Colorado Constitution, Article III and possibly Article V, Section 32, because it interferes with the ability of the executive branch to administer the appropriation and may constitute substantive legislation that cannot be

included in the general appropriations bill. I will direct the department to comply to the extent feasible.

51. **Footnote 71, page 119:** Department of Human Services, Mental Health and Alcohol and Drug Abuse Services, Mental Health Institutes -- It is the intent of the General Assembly that the Mental Health Institutes manage their fiscal operations within the appropriations made by the General Assembly. To that end, the Department of Human Services is requested to provide a report on the prior month's expenditures on the mental health institutes to the Joint Budget Committee by no later than the 15th of each month, commencing August 15, 2005. Said report is requested to include the following: (1) A reconciliation of the month's mental health institute expenditures; (2) a calculation of any shortfall for that month; (3) an estimate of any potential estimated shortfalls anticipated; (4) an annualized estimate based on the month(s) reported; and (5) a fiscal management plan of actions planned to ensure that the mental health institutes can manage within its budget.

    This footnote is in violation of the Colorado Constitution, Article III and possibly Article V, Section 32, because it interferes with the ability of the executive branch to administer the appropriation and may constitute substantive legislation that cannot be included in the general appropriations bill. Additionally, this footnote requires a substantial dedication of resources and constitutes an unfunded mandate.

52. **Footnote 72, page 119:** Department of Human Services, Mental Health and Alcohol and Drug Abuse Services, Mental Health Institutes -- The Department is requested to evaluate the impact of eliminating the residential treatment center at Fort Logan. Said evaluation is requested to include information on the total statewide fiscal impact, the impact to clients, other residential treatment centers, and counties. The report is requested to be provided to the Joint Budget Committee by no later than November 1, 2005.

    This footnote is in violation of the Colorado Constitution, Article III and possibly Article V, Section 32, because it interferes with the ability of the executive branch to administer the appropriation and may constitute substantive legislation that cannot be included in the general appropriations bill. Additionally, this footnote requires a substantial dedication of resources and constitutes an unfunded mandate. I will direct the department to comply to the extent feasible.

53. **Footnote 72a, pages 119-120:** Department of Human Services, Mental Health and Alcohol and Drug Abuse Services, Mental Health Institutes -- The Department is requested to investigate options for obtaining additional federal Medicaid receipts for the mental health institutes and thereby reducing the demand for General Fund. This should include options for changing the governance, management, and funding structure of the Colorado Mental Health Institute at Fort Logan so that it is no longer classified by federal authorities as an "institution for mental disease" or IMD. The Department is requested to provide a report on this topic by October 1, 2005, to the Joint Budget Committee and the Senate and House Health and Human Services Committees. The report should include a discussion of any statutory changes that may be necessary to obtain such additional federal funds.

    This footnote is in violation of the Colorado Constitution, Article III and possibly Article V, Section 32, because it interferes with the ability of the executive branch to

administer the appropriation and may constitute substantive legislation that cannot be included in the general appropriations bill. Additionally, the department has previously complied with the intent of the footnote and has already submitted the requested information.

54. **Footnote 74, page 120:** Department of Human Services, Services for People with Disabilities, Developmental Disability Services, Community Services, Adult Program Costs -- The Department is requested to periodically survey all individuals on the comprehensive services waiting list to determine when each individual will need comprehensive services. The Department is requested to complete the next survey no later than in June, 2007, and to report the results no later than in the submission of the FY 2008-09 budget request to the Joint Budget Committee.

    I vetoed this footnote last year. This footnote violates the separation of powers in Article III of the Colorado Constitution by dictating the content and format of the executive budget request. In addition, this footnote may violate Article V, Section 32 because it constitutes substantive legislation that cannot be included in the general appropriations bill. I will direct the department to comply to the extent feasible.

55. **Footnote 75, page 120:** Department of Human Services, Services for People with Disabilities, Developmental Disability Services, Community Services, Adult Program Costs -- The purpose of this line item is to fund comprehensive residential services for adults with developmental disabilities, supported living services for adults with developmental disabilities, case management services for children and adults with developmental disabilities, and selected special purpose activities including costs associated with audits, behavior pharmacology clinics, and consumer screening for certain placements. The Department is requested to include information on the allocation of expenditures and the number of resources funded by the line item as part of its November 1 budget submission and to provide updates when requested by the General Assembly.

    This footnote is in violation of the Colorado Constitution, Article III and possibly Article V, Section 32, because it interferes with the ability of the executive branch to administer the appropriation, dictates the content and format of the executive budget request, and may constitute substantive legislation that cannot be included in the general appropriations bill. I will direct the department to comply to the extent feasible.

56. **Footnote 76, page 120:** Department of Human Services, Services for People with Disabilities, Developmental Disability Services, Community Services, 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 vetoed a similar footnote in prior years. This footnote attempts to administer the appropriation and violates the separation of powers. I will direct the department to comply with the footnote to the extent feasible.

57. **Footnote 77, pages 120-121:** Department of Human Services, Services for People with Disabilities, Developmental Disability Services, Services for Children and Families, Program

Funding -- The purpose of this line item is to fund early intervention services, family support services, children's extensive support services, and selected special purpose activities to assist children with developmental disabilities and their families. The Department is requested to include information on the allocation of expenditures and the number of resources funded by the line item as part of its November 1 budget submission and to provide updates when requested by the General Assembly.

This footnote violates the separation of powers in Article III of the Colorado Constitution by dictating the content and format of the executive budget request. I will direct the department to comply to the extent feasible.

58. **Footnote 95, page 142:** Department of Labor and Employment, Executive Director's Office, Operating Expenses -- The Department is requested to include estimated costs of computer contract maintenance agreements in its annual budget request. This information is requested in a format that permits comparison, by affected budget line, of ongoing maintenance costs from year to year, including actual, estimated, and projected amounts.

I vetoed this footnote last year. This footnote violates the separation of powers in Article III of the Colorado Constitution by dictating the content and format of the executive budget request. In addition, this footnote may violate Article V, Section 32 because it constitutes substantive legislation. I will instruct the department to comply to the extent feasible.

59. **Footnote 96, pages 142-143:** Department of Labor and Employment, Division of Employment and Training, Unemployment Insurance Fraud Program -- The Department is requested to include in its annual budget request information on fraud detection and recovery, including, but not limited to, an estimate of the amount of unemployment insurance fraud that may have occurred in FY 2004-05, how much of this fraud was detected, and the amount of unemployment insurance recovered.

I vetoed this footnote last year. This footnote violates the separation of powers in Article III of the Colorado Constitution by dictating the content and format of the executive budget request. In addition, this footnote may violate Article V, Section 32 because it constitutes substantive legislation. I will instruct the department to comply to the extent feasible.

60. **Footnote 97, page 143:** Department of Labor and Employment, Division of Employment and Training, Unemployment Insurance Fraud Program, Program Costs -- The Department is requested to provide to the Joint Budget Committee an assessment of the performance of Unemployment Insurance Overpayment Collections Unit on or before November 1, 2005. This report should include relevant performance measurements, including overpayments collected, and a recommendation to continue, modify, or discontinue the Collections Unit.

This footnote is in violation of the Colorado Constitution, Article III and possibly Article V, Section 32, because it interferes with the ability of the executive branch to administer the appropriation and may constitute substantive legislation that cannot be included in the general appropriations bill. I will instruct the department to comply to the extent feasible.

61. **Footnote 97a, page 143:** Department of Labor and Employment, Division of Labor -- Under the Colorado Wage Claims Act and pursuant to Sections 8-4-111, 8-4-112, 8-4-113, 8-4-114, C.R.S., the Department is requested to submit a report to the General Assembly indicating the number of unpaid wage complaints received for FY 2004-05, and the number of those claims investigated and resolved. The report should include the number of wage complaint cases for which actions for penalties were instituted, the total dollar amount of penalties assessed against employers based on unpaid wage complaints, the number of subpoenas issued by the Director or his or her duly authorized representative for wage complaint cases, and the number of wage complaint cases that resulted in criminal penalties. The report should be submitted to the General Assembly no later than November 1, 2005.

This footnote is in violation of the Colorado Constitution, Article III and possibly Article V, Section 32, because it interferes with the ability of the executive branch to administer the appropriation and may constitute substantive legislation that cannot be included in the general appropriations bill. In addition, this footnote implies an unfunded mandate in that there is no funding to conduct the analysis intended by the footnote.

62. **Footnote 103, page 161:** Department of Local Affairs, Division of Housing -- The Division of Housing is requested to provide a report to the Joint Budget Committee by November 1, 2005, on its efforts to eliminate regulatory barriers to the construction of affordable housing. The report should include a review of the types and prevalence of local regulatory barriers to affordable housing, a review of the steps the Division of Housing is taking to reduce these barriers, and a report on the effectiveness of the Division's efforts.

I vetoed this footnote last year. This footnote is in violation of the Colorado Constitution, Article III and possibly Article V, Section 32, because it interferes with the ability of the executive branch to administer the appropriation and may constitute substantive legislation that cannot be included in the general appropriations bill.

63. **Footnote 103a, page 161:** Department of Local Affairs, Division of Housing, Colorado Affordable Housing Construction Grants and Loans -- It is the intent of the General Assembly, consistent with the Governor's veto message of 2002, to maintain this program through other revenue sources. The Department has the ability to utilize impact funds for housing, and the General Assembly wishes to see energy impact funds used for this purpose.

This footnote is in violation of the Colorado Constitution, Article III and possibly Article V, Section 32, because it interferes with the ability of the executive branch to administer the appropriation and may constitute substantive legislation that cannot be included in the general appropriations bill. The Department of Local Affairs may be able to fund Affordable Housing Construction Grants and Loans out of other revenue sources including energy impact funds. However, alternate funds may be available to the department and thus the State should not be tied to using these specified fund sources.

64. **Footnote 103b, pages 161, 240:** Department of Local Affairs, Division of Local Government, Division of Emergency Management; and Department of Public Safety, Office of

Preparedness, Security, and Fire Safety -- The Departments are requested to prepare a report that provides details of how each provision of H.B. 02-1315 contained in Part 16 of Article 33.5 of Title 24, C. R. S., is being complied with by each agency. The report should include detail of which agency is complying with each provision, how the agency is complying, any provisions not currently being complied with, and which agency is responsible for compliance.

This footnote is in violation of the Colorado Constitution, Article III and possibly Article V, Section 32, because it interferes with the ability of the executive branch to administer the appropriation and may constitute substantive legislation that cannot be included in the general appropriations bill. Additionally, the Departments of Local Affairs and Public Safety have previously complied with the intent of the footnote and have provided the requested information to the General Assembly via the Joint Judiciary and Local Government Committees, the Office of the State Auditor, and the Senate Select Committee on Homeland Security. Further information will be provided as appropriate.

65. **Footnote 107, page 180:** Department of Natural Resources, Oil and Gas Conservation Commission -- It is the intent of the General Assembly that the new resources provided for scanning and indexing will create additional efficiencies in the Division. The Department is requested to provide an estimate of staff savings achieved in its FY 2006-07 budget submission to the General Assembly.

I vetoed this footnote last year. This footnote violates the separation of powers in Article III of the Colorado Constitution by attempting to administer the appropriation and by dictating the content of the executive budget request. Additionally, the General Assembly has no authority to appropriate or prescribe limits on FTE.

66. **Footnote 113, page 181:** Department of Natural Resources, Division of Wildlife -- The Division is requested to report to the Joint Budget Committee on the $166,304 in FY 2003-04 of Personal Services expenditures reported in the FY 2005-06 budget as expended in the Operating Expenses lines. This report is requested to delineate which expenditures violated the FY 2003-04 Long Bill Operating Expenses headnote. This report is requested by no later than October 1, 2005.

Because this headnote was vetoed, there was no violation by the Division of Wildlife in FY 2003-04. However, the department was directed to comply with the General Assembly's request and observe the intent of the headnote, and the Division of Wildlife can demonstrate that it did in fact comply in FY 2003-04. The Division, to the extent feasible, will provide documentation to this effect.

67. **Footnote 114, page 197:** Department of Personnel and Administration, Central Services, Facilities Maintenance, Capitol Complex Facilities, Utilities; Grand Junction State Services Building, Utilities; Camp George West, Utilities; Finance and Procurement, Real Estate Services Program, Coordination of Capital Construction, Controlled Maintenance Requests, and Building Lease Review -- The Department of Personnel and Administration is requested to coordinate a statewide review and summary of utility costs contained in the budget. This review should include, but not necessarily be limited to, information on the steps taken in FY 2004-05 and FY 2005-06 to address efficiencies in utility programs, areas where the state can

save money on utility expenditures through efficiencies, where available, and a report on all utility cost savings contracts negotiated through the statutory authority granted in section 24-30-2003, C.R.S. This report should contain information on contracts entered into since FY 2004-05, by department, the scope of the contract, including length and work performed, and the cost savings that will be achieved as a result. The General Assembly requests this information be submitted on November 1, 2005.

This footnote is in violation of the Colorado Constitution, Article III and possibly Article V, Section 32, by attempting to administer the appropriation and may constitute substantive legislation that cannot be included in the general appropriations bill. However, I will direct the Department to provide the information requested in the footnote to the extent feasible.

68. **Footnote 115, page 224:** Department of Public Health and Environment, Hazardous Materials and Waste Management Division, Contaminated Site Cleanups -- The Department is requested to submit a report on its CERCLA program. This report is requested to include detailed expenditures for the program, including out-year estimates by project and associated project financing. The report should also include an analysis of long-term funding needs of the State in responding to, litigating, and cleaning up CERCLA sites, including estimated long-term maintenance costs for these sites. The report should also provide information on the Hazardous Substance Response Fund balance and out-year fiscal estimates. This report is requested to be provided to the Joint Budget Committee by no later than November 1, 2005.

I vetoed this footnote last year. This footnote is in violation of the Colorado Constitution, Article III and possibly Article V, Section 32, because it interferes with the ability of the executive branch to administer the appropriation and may constitute substantive legislation that cannot be included in the general appropriations bill. Furthermore, this footnote requires a substantial dedication of resources and constitutes an unfunded mandate. I will direct the department to comply to the extent feasible.

69. **Footnote 118, page 225:** Department of Public Health and Environment, Disease Control and Environmental Epidemiology Division, Special Purpose Disease Control Programs, Tuberculosis Control and Treatment -- The Department is requested to provide, with its annual budget submission, a listing of counties that participate in tuberculosis control. Information should include, but not be limited to, the number of patients served for tuberculosis infection and active tuberculosis in each county, the total costs associated with all aspects of treatment and control by county, and a breakout of each revenue source. This information would account for counties' 20-percent match required in section 25-4-513, C.R.S. This information should be provided for one actual year, the estimate year, and the request year.

I vetoed this footnote last year. This footnote violates the separation of powers in Article III of the Colorado Constitution by dictating the content and structure of the executive budget submission. In addition, this footnote may violate Article V, Section 32 because it constitutes substantive legislation that cannot be included in the general appropriations bill. I will instruct the department to comply with the intent of the footnote.

70. **Footnote 119, page 225:** Department of Public Health and Environment, Prevention Services Division, Prevention Programs, Chronic Disease and Cancer Prevention Grants -- The General Assembly accepts no obligation to continue funding for these programs when federal funds are no longer available. Any match requirements for these federal grants are to be provided by non-state sources. The Department is requested to document the sources of matching funds, which documentation should be submitted to the Joint Budget Committee annually with its budget request, to serve as proof of the required state match for these federal dollars.

> I vetoed this footnote last year. This footnote violates the separation of powers in Article III of the Colorado Constitution by dictating the content and structure of the executive budget submission. In addition, this footnote may violate Article V, Section 32 because it constitutes substantive legislation that cannot be included in the general appropriations bill. I will instruct the department to comply with the intent of the footnote.

71. **Footnote 120, page 225:** Department of Public Health and Environment, Prevention Services Division, Prevention Programs, Suicide Prevention -- The Department is requested to submit a report by November 1, 2005, detailing how all federal and private suicide prevention grants were spent during FY 2004-05 and whether any such grant funds were used to cover costs that would otherwise have been paid using General Fund expenditures from the Suicide Prevention line item.

> This footnote is in violation of the Colorado Constitution, Article III and possibly Article V, Section 32, because it interferes with the ability of the executive branch to administer the appropriation and may constitute substantive legislation that cannot be included in the general appropriations bill. Additionally, the General Assembly has no authority over federal and private grant funds. Furthermore, the department no longer receives federal funds for this program.

72. **Footnote 122, page 226:** Department of Public Health and Environment, Prevention Services Division, Prevention Partnerships, Tony Grampsas Youth Services Program, Prevention Services Programs -- The Department is requested to submit a report to the Joint Budget Committee on the Tony Grampsas Youth Services Program by November 1, 2006. This report should include the following information for FY 2005-06: (1) Number of applicant organizations and number of organizations receiving funding; (2) names of all applicants and amount applied for by each; (3) numbers of persons served each year; (4) characteristics of programs funded (e.g. program goals, characteristics of persons targeted, types of services provided, geographic locations of programs funded); (5) amount of grantee funding received from other sources administered by the State and from other non-State sources per dollar of Tony Grampsas Youth Services Program funding; and (6) general evaluation of program strengths and weaknesses and any recommendations for statutory changes.

> I vetoed this footnote last year. This footnote is in violation of the Colorado Constitution, Article III and possibly Article V, Section 32, because it interferes with the ability of the executive branch to administer the appropriation and may constitute substantive legislation that cannot be included in the general appropriations bill. I will instruct the department to comply with the intent of the footnote to the extent feasible.

73. **Footnote 123, page 226:** Department of Public Health and Environment, Prevention Services Division, Family and Community Health, Child Adolescent and School Health, Nurse Home Visitor Program -- The Department is requested to provide reports to the Joint Budget Committee with regard to the amount of federal Medicaid funding being drawn by Nurse Home Visitor-contracted agencies for providing Targeted Case Management services to Medicaid-eligible families. The first report should be submitted on or before November 15, 2005, for the first quarter of the fiscal year. Subsequent reports should be submitted on February 15, 2006, May 15, 2006, and August 15, 2006. Reporting should include, but not be limited to: The number of Medicaid-eligible clients served and the amount of Targeted Case Management services billed.

    This footnote is in violation of the Colorado Constitution, Article III and possibly Article V, Section 32, because it interferes with the ability of the executive branch to administer the appropriation and may constitute substantive legislation that cannot be included in the general appropriations bill. I will instruct the department to comply with the intent of the footnote to the extent feasible.

74. **Footnote 124, page 240:** Department of Public Safety, Executive Director's Office, Special Programs, Colorado Integrated Criminal Justice Information System (CICJIS) -- The purpose of this appropriation is to allow the Colorado Bureau of Investigation in the Department of Public Safety, the Judicial Department, the Department of Corrections, the Division of Youth Corrections in the Department of Human Services, and the Colorado District Attorneys' Council to maintain the Colorado Integrated Criminal Justice Information System and to achieve and maintain a match between felony court filings and the initial charges in at least ninety percent of the cases annually.

    I vetoed a similar footnote last year. This footnote violates the separation of powers in Article III of the Colorado Constitution by attempting to administer the appropriation. In addition, this footnote may violate Article V, Section 32 because it constitutes substantive legislation that cannot be included in the general appropriations bill. I will instruct the department to comply with the intent of the footnote. I understand the importance of increasing the disposition match rate and will direct the department to make improving the performance of the system a priority.

75. **Footnote 125, pages 240-241:** Department of Public Safety, Colorado State Patrol -- The Department is requested to submit to the Joint Budget Committee a detailed summary of FTE assigned to the field and to special programs on a semi-annual basis beginning on July 15, 2005. Each semi-annual report should include comparative information about the historical assignment of all uniformed positions, vacant positions, State Patrol Academy graduates, employee turnover (including service and disability retirements), and trooper deployment. In addition, for the annual budget request submission, the budget forms should include specific expenditures from the consolidated operating expenses line, and for any consolidated program lines, sufficient detail to allow personal services calculation for Option 8 purposes, including PERA and Medicare detail.

I vetoed this footnote last year. 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. The General Assembly does not have the authority to appropriate FTE. In addition, this footnote may violate Article V, Section 32 because it constitutes substantive legislation that cannot be included in the general appropriations bill. I will direct the department to comply with the intent of the footnote.

76. **Footnote 127, page 241:** Department of Public Safety, Division of Criminal Justice, Community Corrections, Day Reporting Center -- The appropriation for this line item was increased relative to the appropriation for FY 2004-05 to support 75 additional day reporting slots. It is the intent of the General Assembly that these additional slots be allocated to offenders who would have otherwise been incarcerated in a residential placement at a higher net cost to the state. The slots are not intended to be used for individuals who would have otherwise been in a nonresidential placement without day reporting services.

    This footnote violates the separation of powers in Article III of the Colorado Constitution by attempting to administer the appropriation. In addition, this footnote may violate Article V, Section 32 because it constitutes substantive legislation that cannot be included in the general appropriations bill. The Department of Public Safety does not have sole jurisdiction over the sentencing of the Day Reporting population and, therefore, cannot comply with the footnote's intent.

77. **Footnote 128, page 248:** Department of Regulatory Agencies, Executive Director's Office and Administrative Services -- The Department is requested to submit a report to the Joint Budget Committee by October 1, 2006 on the Office of Expedited Settlement within the Division of Registrations. The report shall include quantitative measures that can be used to assess the program and a recommendation, based on those measures, to continue, modify or discontinue the program.

    I vetoed this footnote last year. This footnote may violate Article V, Section 32 because it constitutes substantive legislation that cannot be included in the general appropriations bill. In addition, this footnote essentially requires the department to prepare a sunset review and report. Reports such as this have separate authorizing statutory direction. Nonetheless, this information may be useful, so I will direct the department to comply to the extent feasible.

78. **Footnote 129, page 262:** Department of Revenue, Information Technology Division -- The Department of Revenue is requested to consistently reflect additional computer programming costs in fiscal notes for proposed legislation. The Department is requested to meet with the Legislative Council fiscal note staff and the Joint Budget Committee staff in an effort to continually revise and update the policy of reflecting programming costs with regard to legislative bills. The Department is requested to submit, with its November 2005 budget request for FY 2006-07, a memorandum explaining its policy with respect to reflecting additional computer programming costs in fiscal notes for legislation during the 2006 legislative session. The Department is requested to submit a negative supplemental request for any estimated savings associated with implementing legislation enacted during the 2005 legislative session.

I vetoed this footnote last year. This footnote violates the separation of powers in Article III of the Colorado Constitution by dictating the format and content of the executive budget request. In addition, this footnote may violate Article V, Section 32 because it constitutes substantive legislation that cannot be included in the general appropriations bill. I will direct the department to comply to the extent practicable.

79. **Footnote 131, page 269:** Department of Transportation, Administration -- The Department is requested to complete state budget forms for Administration personal services that provide information for each office or section within the Administration line item. This information should be sufficiently detailed to allow calculation for Option 8 purposes. PERA and Medicare should also be provided by the individual section or office. Additionally, the Department should include subtotals for salary and FTE for each of the offices within the Administration line item information currently supplied.

I vetoed this footnote last year. 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, and implies intent to appropriate FTE. In addition, this footnote may violate Article V, Section 32 because it constitutes substantive legislation that cannot be included in the general appropriations bill. I will instruct the department to comply with the intent of the footnote.

SECTION 3: CAPITAL CONSTRUCTION

1. **Capital Construction. Footnote 2, page 295:** Capital Construction, Department of Higher Education, University of Colorado Health Sciences Center, Capital Construction, Fitzsimons Trust Fund; Lease Purchase of Academic Facilities at Fitzsimons -- It is the intent of the General Assembly that the State Controller restrict these funds pending notification by the University of Colorado that there is a final court decision allowing lease purchase agreements pursuant to H.B. 03-1256, and an amount is due to a lessor for the lease purchase of academic buildings at Fitzsimons in the 2005-06 fiscal year.

   I vetoed this footnote last year. This footnote is in violation of the Colorado Constitution, Article III and possibly Article V, Section 32, because it interferes with the ability of the executive branch to administer the appropriation and may constitute substantive legislation that cannot be included in the general appropriations bill. I will instruct the department and the State Controller to comply with the intent of the footnote to the extent feasible.

2. **Capital Construction. Footnote 3, page 295:** Capital Construction, Department of Natural Resources, Division of Wildlife -- It is the intent of the General assembly that the Division better inform members of the General Assembly regarding the purchase of property and easements. As soon as the Division starts to consider a property acquisition or easement in a given county, the Division is directed to contact all members of the General Assembly who represent any portion of the county where the proposed acquisition or easement is to occur. Such notification shall include the specific location of the property or easement to be

acquired, the mechanism for funding the proposal and the justification for seeking the acquisition of easement.

> This footnote violates the separation of powers in Article III of the Colorado Constitution by attempting to administer the appropriation. In addition, this footnote may violate Article V, Section 32 because it constitutes substantive legislation that cannot be included in the general appropriations bill. I will direct the department to comply to the extent feasible.

For these reasons, I have exercised my power to veto certain portions of Senate Bill 05-209.

Sincerely,

Bill Owens
Governor