

STATE OF COLORADO

OFFICE OF THE GOVERNOR

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Jared Polis
Governor

April 18, 2019

The Honorable Colorado Senate
Seventy-Second General Assembly
First Regular Session
State Capitol Building
Denver, Colorado 80203

Ladies and Gentlemen:

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

Senate Bill 19-207 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, 2019, EXCEPT AS OTHERWISE NOTED.

Approved April 18, 2019 at _____ p.m.

The FY 2019-20 budget lays a strong foundation for a bold vision for our state, creating opportunity for all. A product of collaboration and teamwork with Colorado's leaders in the General Assembly, this budget ensures that our state's economic success can be realized by every child, adult, and business in our communities. My top priority in this first year as Colorado's 43rd Governor was to provide access to free, full-day kindergarten to every Colorado family. I am proud to say that this budget makes that vision a rapid reality, with funding now available for the school year that starts this fall.

We especially want to thank the members of the General Assembly for these top priority items for Colorado included in my first budget request:

Education: As mentioned above, the budget sets aside \$175 million in funding for free full-day kindergarten. For the first time, kindergarten students across the state will be

funded at the same level as all other students. Full-day kindergarten not only has lifelong benefits for children across the state, it saves families money by eliminating kindergarten tuition, and frees up more than 5,100 preschool slots and \$100 million in local school district resources to spend on other priorities such as class size and teacher pay. On the other end of the student journey, the budget holds tuition flat for students at our public colleges and universities (\$121 million increase).

The General Assembly also has the opportunity to prioritize further investment in K-12 education through the School Finance Act. Legislative Council Staff estimates that due to higher-than-expected property tax payments and the final residential assessment rate study released on April 10th, \$107.6 million is freed up. My budget proposed an increase of \$92 million for education reserves. The additional funding available means that the General Assembly has the opportunity to increase investments in our schools this year while also setting aside funding for education reserves to protect against a future economic downturn.

Health Care: This budget establishes the first-ever Office of Saving People Money on Health Care through a modest investment of \$200,000. This Office is working to reduce patient costs, and pursue long-lasting changes to improve the health care system. As supported in my budget, there are a number of cost-saving reforms in the legislature now that will lower the cost of health insurance, protect consumers from out-of-network surprise billing, lower hospital prices, increase transparency, and lower the costs of prescription drugs. Our priorities are outlined in detail in the [Health Care Road Map](#).

The Colorado Way of Life: The budget includes \$10 million in an unprecedented use of General Funds to help secure our water future through implementation of the Colorado Water Plan. Also included are improvements for the Oil and Gas Conservation Commission, including an increase of \$2.1 million cash funds for a total of 19 new staff members, ranging from field inspectors to environmental and reclamation specialists. These new positions will align with regulatory changes made through S.B. 19-181 to better prioritize public health, safety, the environment, and wildlife in the regulation of the oil and gas industry. The budget increases funding for transportation to \$2.2 billion total funds, an increase of 40% over FY 2017-18 levels, and includes an additional \$100 million in General Fund above the \$200 million increase in my request.

Opportunity for All: So that every person living in our communities can thrive, no matter their immigration status, the budget expands a program (\$263 thousand) that provides immigrants with drivers' licenses and identification cards. The budget also helps state employees with the increased cost of living by including \$64.5 million total funds

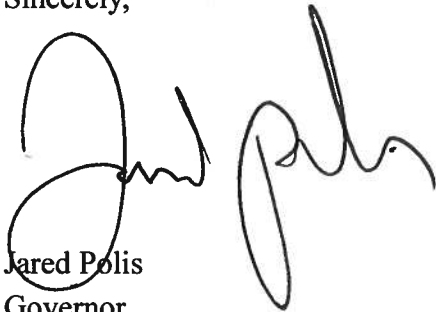
(including \$35.4 million General Fund) for an across-the-board salary increase of 3.0 percent. The budget also addresses inequities in our criminal justice system, including an increase of \$12.6 million General Fund for criminal justice reforms, including re-entry, housing support, job training, parole case managers, and a new work release program.

These priorities and more as detailed in Attachment 1 represent a budget with the right priorities for Colorado.

Last, Attachment 2 to this letter sets out the Administration's concerns with select footnotes and FTE in S.B. 19-207.

In closing, I would like to express my Administration's gratitude for the work performed by the Joint Budget Committee members, the Joint Budget Committee staff, the staff of the Office of State Planning and Budgeting, and the Department budget analysts throughout Colorado's government for their dedication to a responsible and effective budget.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jared Polis', is written over the printed name and title.

Jared Polis
Governor

Attachments

1. Select budget highlights
2. Concerns with S.B. 19-207 Footnotes and FTE

Attachment 1: Budget Highlights

Department of Agriculture

- The budget includes an increase of \$300,000 to the Department of Agriculture to support international marketing efforts of Colorado's agricultural products.

Department of Corrections

- The budget includes an increase of \$12.6 million General Fund for criminal justice reforms, including re-entry, housing support, job training, parole case managers, and a new work release program.
- The budget includes \$27.3 million General Fund to more fairly compensate our state correctional officers and align pay more closely with the market median.

Department of Education

- The budget sets aside \$175 million to fund free full-day kindergarten and make this important investment available statewide.
- The budget also sets aside funds to continue to pay back schools from recession-era cuts, reducing the budget stabilization factor by \$77 million. \$595 million remains in the budget stabilization factor.

Department of Healthcare Policy and Financing

- The budget includes an increase of \$216.4 million to provide health services to 1.25 million Coloradans including low-income children and adults, pregnant women, older adults, and residents with physical and developmental disabilities.
- The budget includes an additional \$2.5 million to the Department of Health Care Policy and Financing to support the All-Payer Claims Database to improve state and consumer access to health care cost data and promote effective cost-savings initiatives across the state.
- The budget includes an increase of \$87 million for services for individuals with developmental disabilities, to enroll up to an additional 699 people into the adult comprehensive service program, making a significant contribution to eliminating the waiting list for these services. The budget also raises the bar for employment possibilities for persons with intellectual and developmental disabilities. See Department of Labor and Employment and the Office of Employment First.

Department of Higher Education

- The budget increases funding for higher education by \$121 million to hold tuition flat at Colorado's public colleges and universities (Metro State University permitted a 3% increase).

Department of Human Services

- The budget includes \$6.3 million total funds, including \$4.6 million General Fund, to add child welfare staff at the county level. This investment represents the fifth phase of a multi-phased approach to ensure county providers have the capacity to provide effective and appropriate case management services.
- The budget includes \$15.6 million total funds, including \$11.1 million General Fund, to provide salary increases to direct care employees at the Veterans Community Living Centers and Division of Youth Services facilities in the Department of Human Services. These changes will align pay more closely with the market median.

Department of Labor and Employment

- The budget establishes the statewide Office of Employment First and puts \$3.0 million toward supported employment initiatives in the Department of Health Care Policy and Financing and in the Department of Labor and Employment for people with both physical and developmental disabilities, and additional state services for people with developmental disabilities and their families.

Department of Local Affairs

- The budget includes \$2.7 million General Fund in the Department of Local Affairs to maintain funding for housing vouchers that enable clients to transition from living in institutions or nursing facilities back into the community, which is supported by the Colorado Choice Transitions program.
- The budget includes \$300,000 General Fund for temporary resources to promote participation in Census 2020 in the Department of Local Affairs. A coordinated statewide communications and outreach effort will give Colorado the opportunity to develop and leverage material to educate its population about the importance of the Census and drive participation. An accurate count is essential for proper distribution of federal funding to Colorado.

Department of Natural Resources

- The budget includes an increase of \$7.4 million cash funds for new staff and initiatives at the Division of Parks and Wildlife, pursuant to the passage of last year's Future Generations Act (SB18-143).
- The budget includes an unprecedented use of General Fund (\$10 million) to help secure our water future through implementation of the Colorado Water Plan.
- Also included are improvements for the Oil and Gas Conservation Commission, including an increase of \$2.1 million cash funds for a total of 19 new staff members, ranging from field inspectors to environmental and reclamation specialists.

Department of Public Health and Environment

- The budget includes an increase of \$1 million in the Department of Public Health and Environment to expand the Family Planning Program and maintain gains in reducing unintended pregnancies.

Department of Public Safety

- The budget includes an increase of \$1.9 million General Fund in the Department of Public Safety to increase grant availability for juvenile justice diversion programming. This funding is connected to a recommendation from the Improving Outcomes for Youth Task Force and will expand juvenile diversion program capacity in each of Colorado's 22 judicial districts.
- The budget includes \$2.3 million from the Highway Users Tax Fund for an additional 20 State Troopers to keep up with population and traffic growth in the state.
- The budget includes an increase for school safety, adding \$179,460 General Fund to the Safe2Tell program for upgraded infrastructure to handle a significant increase in call volume, and analytical tools to help the Department of Public Safety investigate and verify reported threats.

Department of Revenue

- The budget includes \$262,978 cash funds to expand a program that provides immigrants with drivers' licenses and identification cards.

Department of Transportation

- The Department of Transportation's budget will be 40% higher in FY 2019-20 than it was in FY 2017-18; the difference between over \$2.2 billion and under \$1.6 billion in just two years. This is in large part due to the General Assembly's contribution of near record amounts of General Fund and the creation of a new, albeit temporary, revenue stream. Of the Department's \$2.2 billion budget in FY 2019-20, \$300 million will consist of General Fund transfers, while another \$500 million will consist of proceeds generated by the lease-purchase agreements entered into pursuant to S.B. 17-267.

Statewide

- The budget helps state employees address an increased cost of living by including \$64.5 million total funds (including \$35.4 million General Fund) for an across-the-board salary increase of 3.0 percent.
- The budget includes \$252 million in capital funding for state agencies and institutes of higher education. This includes \$27.2 million for information technology capital projects, and \$57.1 million for much needed controlled maintenance.
- The budget includes an increase of \$11.9 million in the Governor's Office of Information Technology to accelerate the pace at which the Secure Colorado cybersecurity strategic plan is implemented. This funding will go a long way to reduce and mitigate attacks like the Department of Transportation cybersecurity incident.

Attachment 2: Concerns with S.B. 19-207 Footnotes and FTE

It is the Governor's constitutional obligation to review the general appropriations bill and exercise the line item veto when necessary. We recognize and appreciate the legitimate and reasonable expression by the General Assembly of the intent associated with certain appropriations contained in the FY 2019-20 Long Bill. In fact, many of these expressions of intent are based on information contained within the Executive Branch budget requests. In general, we interpret most of these expressions of intent as different from attempts to administer appropriations or to pursue substantive law via the general appropriations bill. Thus, we have not vetoed any of the footnotes in S.B. 19-207.

While the Legislature has the prerogative to express its intent, the Executive Branch maintains the clear and inherent responsibility to administer appropriations (see **Colorado General Assembly v. Owens**, 136 P.3d 262 (Colo. 2006); **Colorado General Assembly v. Lamm**, 704 P.2d 1371 (Colo. 1985); and **Anderson v. Lamm**, 195 Colo. 437, 579 P.2d 620 (1978)). For this reason, we have directed Executive Branch agencies to comply with the intent of the footnotes contained in S.B. 19-207 only to the extent practicable and appropriate.

Moreover, if operational needs dictate otherwise, the Executive Branch will not be constrained by any limitations implied within any of the Long Bill footnotes. In particular, many footnotes in S.B. 19-207 may constitute attempts by the General Assembly to administer the appropriation, including:

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

As such, Executive Branch agencies may deviate from the intent expressed in any footnote as necessary.

Three footnotes included in S.B. 19-207 are of particular concern to us:

- **Footnote 3a, Page 28:** Department of Corrections, Canteen Operation, Operating Expenses -- It is the General Assembly's intent that a portion of the funding for operating expenses be used to purchase soft-soled tennis shoes for inmates with diabetes.

The Department intends to satisfy the intent of footnote 3a; however, the Department may not use a portion of the Canteen Operations line to make these purchases as specified in the footnote. The Department is statutorily required to

provide medical services to inmates under their jurisdiction, including soft-soled tennis shoes, which is normally covered by the Purchase of Medical Services line item.

Further, the Department is in the final stages of a settlement agreement in the case of *Montez v. Hickenlooper, et al.* A settlement, preliminarily accepted by the tenth circuit on May 17, 2018, states that the plaintiffs, in partnership with non-profit organizations, will provide soft-soled tennis shoes to inmates with diabetes. Certain procedural aspects of the case are still in the appeals process. It is possible that direct compliance with this footnote would take the Department out of compliance with the settlement agreement reached in the *Montez* lawsuit.

- **Footnote 14, Page 68:** Department of Health Care Policy and Financing, Executive Director's Office, Eligibility Determinations and Client Services, County Administration -- It is the General Assembly's intent that quality incentive payments made from this line item be aligned with and complementary to: (1) the continuous quality improvement plan developed pursuant to Section 26-1-122.3 (3), C.R.S.; (2) the mutually agreed upon method for distributing federal performance bonus money developed pursuant to Section 26-2-301.5 (1)(d), C.R.S.; and (3) the mutually agreed upon method for charging counties for federal monetary sanctions for failing to meet performance measures pursuant to Section 26-2-301.5 (2)(b), C.R.S.

The footnote conflicts with Section 25.5-4-205, C.R.S. The Department of Human Services is required to pass on federal sanctions to counties for inaccurate eligibility determinations, but Section 25.5-4-205, C.R.S. does not give the Department of Health Care Policy and Financing that authority. The Department will design requirements that are as similar as possible to these requirements within the bounds of its statutory authority.

- **Footnote 41, Page 121:** Department of Human Services, Office of Self Sufficiency, Special Purpose Welfare Programs, Food Distribution Program -- Of this amount, it is the General Assembly's intent that \$100,000 General Fund go to a Colorado-based community foundation as part of the department's responsibilities under Section 26-1-121, C.R.S., to distribute funds to requesting food pantries and food banks, not to exceed \$50,000 per entity per year, such funds to be used for the purchase of Colorado grown foods that meet the Colorado Proud definition and any associated costs, such as transportation and cold storage. This amount is calculated based on the assumption that the Colorado-based community foundation will receive up to 5.0 percent of the total allocation for costs associated with program administration and that entities receiving

funds will use no more than 10.0 percent of these funds for indirect costs associated with the purchase of Colorado grown foods including, but not limited to, transportation, refrigeration, and storage.

As noted for this footnote in last year's Long Bill, the footnote attempts to administer the appropriation by directing the allocation of funding to certain entities for the purchase of certain products. The Department supports the purchase of Colorado-grown foods, and has directed FY 2018-19 funds accordingly. In its responsibilities to administer this program, however, the Department will continue to assess how best to distribute funds to meet the needs of both the Coloradans using the Food Distribution program and community agencies.

As with past administrations, we are concerned with the General Assembly's inclusion of full-time equivalent positions (FTE) within the general appropriations act. The Colorado Supreme Court's opinion in **Anderson v. Lamm**, 195 Colo. 437, 579 P.2d 620 (1978) clearly states that "specific staffing and resource allocation decisions" in a general appropriations bill are unconstitutional. The Supreme Court affirmed this finding in **Colorado General Assembly v. Owens**, 136 P.3d 262 (Colo. 2006). Further, it remains our opinion that any predetermined prescription of FTE authorization limits the ability of State agencies to make the most resource-effective use of appropriations to accomplish critical performance objectives.

Therefore, Executive Branch agencies are instructed to manage their appropriations within the scope of the dollars appropriated in S.B. 19-207 and without limitation by the bill's FTE authorizations.