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## MEMORANDUM

**TO:** Interested Persons

**FROM:** Office of Legislative Legal Services

**DATE:** March 26, 2013 (Reviewed October 29, 2018)

**SUBJECT:** Long bill footnotes under section 24-75-112 (2), C.R.S.

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### **I. Background**

The following is intended to provide guidance on what Long Bill footnotes may include under the language of section 24-75-112 (2), C.R.S.<sup>1</sup> In the context of offering footnotes as amendments to the Long Bill during second reading, it should be noted preliminarily that, regardless of the following discussion, it is the chair of the committee of the whole who ultimately determines whether the contents of a particular footnote offered as an amendment to the Long Bill comports with this section and is or is not in order and the affirmative vote of the committee of the whole as to whether the footnote is approved.

### **II. Discussion**

#### **A. Definition of footnotes under section 24-75-112 (2)(a), C.R.S.**

Section 24-75-112 (2)(a), C.R.S., specifies that the footnotes to Long Bill appropriations are provisions that set forth purposes, conditions, or limitations in connection with a particular line item and are intended to be binding to the extent those purposes, conditions, or limitations are integral to the appropriation and are not, in accordance with *Colorado General Assembly v. Owens*, 236 P.3d 262 (Colo. 2006), "conditions reserving to the General Assembly powers of close supervision over the appropriation." This provision recognizes the limitations on the ability of the General Assembly to administer a Long Bill appropriation under separation of powers principles and incorporates that concept into this statutory definition of footnotes.

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<sup>1</sup> See attached Addendum A.

**B. Permissible footnotes under section 24-75-112 (2)(b), C.R.S.**

Section 24-75-112 (2)(b), C.R.S., permits footnotes that set forth a "statement of explanation" or "expression of legislative intent" relating to an appropriation.

***"Statement of explanation"***: A footnote containing a statement of explanation is one that ordinarily explains the basis or purpose of the appropriation and is often coupled with a statement of legislative intent. Please see attached Addendum B for recent examples of this type of footnote.

***"Expression of legislative intent"***: These footnotes ordinarily contain aspirational or precatory language beginning with "It is the intent of the General Assembly that".<sup>2</sup>

**C. Prohibited footnotes under section 24-75-112 (2)(b), C.R.S.**

Section 24-75-112 (2)(b), C.R.S., prohibits footnotes that contain any provision of substantive law or **require or request** that any administrative action be taken in connection with any appropriation.

***Substantive law footnote***: A footnote containing a provision of substantive law is one with language that is statutory in character and thereby creates or defines a governmental program, function, or regulation or that operates as an extension of a current statutory provision. For example, a previous Governor claimed that the following footnote to a Department of Transportation appropriation was substantive legislation:

Department of Transportation, Statewide Tolling Enterprise -- Within 120 days the Department shall develop rules to allow hybrid vehicles to drive in High Occupancy Vehicle lanes.

***Required or requested agency action footnote***: Footnotes requiring or requesting certain agency action ordinarily contain language in connection with the expenditure of an appropriation, utilization of FTE, operation or purpose of a program or appropriation, or the provision of a report. Such language ordinarily specifies that an agency "shall" or "is requested to" take specific action. The language of section 24-75-112 (2)(b), C.R.S., appears to preclude those footnotes requesting reports or

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<sup>2</sup> Examples of this type of footnote are found in attached Addendum B.

information that were historically included in Long Bill.<sup>3</sup>

Additionally, while section 24-75-112 (2)(b), C.R.S., authorizes expressions of legislative intent, if such an expression is used to require or request any administrative action, **an amendment to add such a footnote could nonetheless be ruled out of order.**

**D. Statutorily authorized footnotes.**

The following statutory provisions authorize certain footnotes in the Long Bill and would appear to override section 24-75-112 (2)(b), C.R.S., to the extent there is a conflict between that section and the language of the particular provision:

- Section 22-54-104 (5)(c)(III)(B), C.R.S., specifies that the amount transferred by the department of education to the legislative council to fund a cost of living analysis shall not exceed the maximum amount specified in a footnote related to the appropriation in the Long Bill.
- Section 23-18-202 (3)(b), C.R.S., specifies that the tuition increases from which the general assembly derived the total cash fund spending authority for each governing board shall be noted in a footnote to the Long Bill.
- Section 26-13-108 (1), C.R.S., states that the amount of the state's share of recoveries for public assistance paid for child support and maintenance that is redirected to the counties will be specified in a footnote in the Long Bill. (As amended by S.B. 12-113).
- Section 42-4-1301.3 (4)(a), C.R.S., specifies that any adjustment in the amount to be assessed against persons for the alcohol and drug safety driving program shall be noted in the appropriation to the judicial department and the unit in the Department of Human Services that administers behavioral health programs and services as a footnote or line item in the Long Bill.

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<sup>3</sup> An example of an "is requested to" footnote that arguably pushes the limits of section 24-75-112 (2)(b), C.R.S., is found in footnote 1a to the Dept. of Corrections budget in the FY 11-12 Long Bill, which provides that certain agencies "are requested to designate one lead agency to be responsible for submitting a ... budget request....".

**24-75-112. Annual general appropriation act - headnote definitions - general provisions - footnotes.** (2) (a) When it is not feasible, due to the format of the annual general appropriation 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 the annual general appropriation act are provisions that set forth such purposes, conditions, or limitations. Such provisions are intended to be binding portions of the items of appropriation to which they relate to the extent that those purposes, conditions, or limitations are integral to the appropriation and are not, in accordance with the Colorado supreme court decision in Colorado General Assembly v. Owens, 136 P.3d 262 (Colo. 2006), conditions reserving to the general assembly powers of close supervision over the appropriation.

(b) The footnotes may also contain an explanation of any assumptions used in determining a specific amount of an appropriation. However, such footnotes shall not contain any provision of substantive law or any provision requiring or requesting that any administrative action be taken in connection with any appropriation. Footnotes may set forth any other statement of explanation or expression of legislative intent relating to any appropriation.

## **ADDENDUM A**

## FOOTNOTE EXAMPLES

### 1. Statement of explanation:

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 provide access to radio and television broadcasts of locally published and produced materials, and \$50,000 of this appropriation be used to provide telephone access to digital transmissions of nationally published and produced materials.<sup>4</sup>

Department of Health Care Policy and Financing, Medical Services Premiums -- The General Assembly has determined that the average appropriated rates provide sufficient funds to pay reasonable and adequate compensation to efficient and economical providers. It is the intent of the General Assembly that the Department take actions to ensure that the average appropriated rates are not exceeded.

Department of Human Services, Division of Child Welfare, Family and Children's Programs -- Pursuant to section 26-5-104 (6), C.R.S., counties are authorized to negotiate rates, services, and outcomes with child welfare service providers and are thus not required to provide a specific rate increase for any individual provider. The funding appropriated for this line item includes an increase of \$680,691 based on a 1.5 percent increase in funding that is allocated to counties and tribes. The purpose of this increase is to provide counties and tribes with additional funds to increase rates paid to community providers.

### 2. Expression of legislative intent:

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 10,296 Indigent Mentally Ill Clients -- 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.

Department of Law, Legal Services to State Agencies -- In making this appropriation, it is the intent of the General Assembly that hourly billing rates charged by the Department for legal services to state agencies not exceed \$74.64 per hour for attorneys and not exceed \$60.79 per hour for paralegals, which equates to a blended rate of \$72.03 per hour.

## ADDENDUM B

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<sup>4</sup> Also includes an expression of legislative intent.