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MEMORANDUM

TO: The Joint Budget Committee
FROM: The Office of Legislative Legal Services and Joint Budget Committee Staff
DATE: September 18, 2014
SUBJECT: Proposed New Format for Appropriation Clauses

Issues for the Joint Budget Committee's Consideration

- (1) Should staff adopt a new format for legislative appropriation clauses?
- (2) Will the Joint Budget Committee sponsor legislation to codify provisions from the existing clauses?

Background

A critical part of legislation that creates a new program or changes an existing one is the appropriation clause. Through it, the General Assembly grants an agency the authority to spend state money from an identified source for a particular purpose, usually for a limited time. Recently, the trend has been to include more details in the clauses, but their basic format has essentially been the same for over a century. During that time, the clauses have been interpreted and applied without much controversy.

Yet, after an internal review, we believe that the clauses can be improved. Specifically, they should be rewritten to remove unnecessary language, which can be codified; to increase legal accuracy; and to improve readability. The

changes, however, are not intended to affect the meaning of the appropriation clauses or how the State Controller allows a department to spend its money.

To ensure that we have not changed the status quo, we vetted the clauses with the Executive Branch – the State Controller's Office, the Office of State Planning and Budgeting, and all of the departments. Their feedback was very positive and they did not identify any serious obstacles to adopting the proposed language, though we did incorporate several changes based on the departments' suggestions.

Existing Appropriation Clause

SECTION __. Appropriation. In addition to any other appropriation, there is hereby appropriated, out of any moneys in the general fund not otherwise appropriated, to the department of public health and environment, for the fiscal year beginning July 1, 2014, the sum of \$73,972 and 0.9 FTE, or so much thereof as may be necessary, to be allocated to the prevention services division for the suicide prevention program for the implementation of this act.

This clause, which is based on an appropriation clause from the last legislative session,¹ is an example of a typical, simple appropriation clause. It is written as a single sentence and it identifies the source of the appropriation, the department and a specific division within it, the fiscal year, the amount of the appropriation and the related FTE, and a purpose. The clause also has additional requirements related to the appropriation – "In addition to any other appropriation", "not otherwise appropriated", and "or so much thereof as may be necessary."

New Appropriation Clause Format

Here is the same appropriation rewritten in the proposed new style:

SECTION __. Appropriation. For the 2014-15 state fiscal year, \$73,972 is appropriated to the department of

¹ This is an appropriation clause from Senate Bill 14-088, but with the phrase "for the implementation of this act" added to the end.

public health and environment for use by the prevention services division. This appropriation is from the general fund and is based on an assumption that the division will require an additional 0.9 FTE. To implement this act, the division may use this appropriation for the suicide prevention program.

Rather than a single, lengthy sentence, this new format employs a three-sentence structure. The first sentence describes the fiscal year, the amount of the appropriation, and the department, including the division that will use the appropriation. So, with a cursory review, a reader will know the essential information about the appropriation.

The second sentence identifies the source of the appropriation. If the source is a cash fund, the statutory citation for the fund will be identified, but that is unnecessary for the general fund. Also, rather than "appropriating" an FTE, it describes the associated FTE consistently with the definition of "FTE" that applies to the Long Bill,² which complies with Colorado case law.

The third sentence specifically identifies how the department, or in this case, the division, is permitted to use the appropriation. In many instances, this last sentence will include additional details about a program or a subdivision within the Long Bill, so that the specified use corresponds to a Long Bill appropriation. A drafter will have some flexibility in the phrasing used to add this additional information, but the content will likely begin with "for", "to", or "related to."

A key feature of the clause is what is excluded from it. All three of the additional requirements from an existing clause are omitted from this new version.³ Arguably, all of these phrases are unnecessary, but to ensure that the omissions will have no legal effect, we are also recommending that the Joint Budget Committee carry legislation that codifies their application to all future appropriation clauses. So, the phrases will still apply to, but not clutter, each clause. This approach is similar to how section 24-75-112, Colorado Revised Statutes, incorporates definitions and general provisions related to the Long Bill. To further streamline the clauses, we are also recommending that the

² Section 24-75-112 (1) (d) (V), C.R.S.

³ "In addition to any other appropriation", "not otherwise appropriated", and "or so much thereof as may be necessary."

abbreviation "C.R.S." be defined in the bill, so that it can be used in the clauses rather than spelling out "Colorado Revised Statutes".

New Format with Multiple Purposes

A common variation of the simple appropriation clause sets forth multiple purposes in separate paragraphs. Here is an example of this clause in the proposed new format:⁴

SECTION __. Appropriation. (1) For the 2014-15 state fiscal year, \$589,618 is appropriated to the department of public safety for use by the division of homeland security and emergency management. This appropriation is from the general fund. To implement this act, the division may use this appropriation as follows:

- (a) \$73,165 for personal services, which amount is based on an assumption that the division will require an additional 0.9 FTE;
- (b) \$16,453 for operating and travel expenses and capital outlay; and
- (c) \$500,000 for a statewide radio communications needs assessment and business plan.

Again, the same three-sentence format is employed, but the last sentence is expanded and subdivided into three paragraphs to separately identify each of the various uses. Also, the FTE is listed with the particular purpose with which it is associated, rather than for the overall appropriation in the second sentence.

New Format Synced with Long Bill

In certain situations, the standard new format may not effectively match an appropriation or series of appropriations from the Long Bill. To address this situation, we developed the following columnar format, which is a hybrid between the proposed new format and the Long Bill:

⁴ This is a new version of the appropriation in Senate Bill 14-127, with a technical correction.

Section . Appropriation. (1) For the 2014-15 state fiscal year, \$7,953,877 is appropriated to the department of corrections. This appropriation is from the general fund and is based on an assumption that the department will require an additional 71.9 FTE. To implement this act, the department may use this appropriation as follows:

Management, executive director's office subprogram

Health, life and dental	\$418,420
Short-term disability	7,981
Amortization equalization disbursement	145,133
Supplemental amortization equalization disbursement	136,063
Leased space	220,550

Management, inspector general subprogram

Operating expenses	1,961
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Institutions, superintendents subprogram

Start-up costs	109,330
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Institutions, case management subprogram

Personal services	1,443,860 (26.9 FTE)
Operating expenses	14,650
Start-up costs	137,798

...⁵

The introductory portion of the appropriation clause is similar to the last example, but the overall FTE is listed in the second sentence. And rather than using separate paragraphs for each of the individual line items, the purposes and corresponding amounts are listed in a table format. Each identified purpose should coincide with a line item in the Long Bill, and the underlined headings that precede an item or series are the Long Bill subdivisions that apply to the item. The specific FTE associated with a particular purpose is identified after the appropriation amount in parenthesis, as it appears in the Long Bill.

Also like the Long Bill, the purpose and heading would dictate how the appropriation could be used. So, for example, under the above appropriation,

⁵ This is a new version of an excerpt of the appropriation in House Bill 14-1355.

the Department of Corrections could use \$109,330 for start-up costs in the superintendents subprogram, but not for the inspector general subprogram.

New Format in Other Situations

It is likely that a majority of appropriation clauses will be variations on the first three clauses, but here are other common clauses in the proposed new format:

1. Multiple Sources

SECTION __. Appropriation. (1) For the 2014-15 state fiscal year, \$84,147 is appropriated to the department of revenue. This appropriation consists of \$66,689 from the general fund, \$13,338 from the license plate cash fund created in section 42-3-301 (1) (b), C.R.S., and \$4,120 from the Colorado state titling and registration account of the highway users tax fund created in section 42-1-211 (2), C.R.S. To implement this act, the department may use this appropriation as follows:

(a) \$80,027, which consists of \$66,689 from the general fund and \$13,338 from the license plate cash fund, for license plate ordering; and

(b) \$4,120 from the Colorado state titling and registration account of the highway users tax fund for the purchase of computer center services.⁶

2. Reappropriated Funds

SECTION __. Appropriation. (1) For the 2014-15 state fiscal year, \$5,202 is appropriated to the department of revenue. This appropriation is from the liquor enforcement division and state licensing authority cash fund created in section 24-35-401, C.R.S. To implement this act, the department may use this appropriation as follows:

(a) \$1,082 for personal services by the liquor and tobacco enforcement division; and

⁶ This is a new version of an appropriation in House Bill 14-1029.

(b) \$4,120 for the purchase of computer center services.

(2) For the 2014-15 state fiscal year, \$4,120 is appropriated to the office of the governor for use by the office of information technology. This appropriation is from reappropriated funds received from the department of revenue under paragraph (b) of subsection (1) of this section. To implement this act, the office may use this appropriation to provide computer center services for the department of revenue.⁷

3. State Appropriation with Matching Federal Funds that are Custodial⁸

SECTION __. Appropriation. (1) For the 2014-15 state fiscal year, \$145,983 is appropriated to the department of health care policy and financing. This appropriation is from the general fund. To implement this act, the department may use this appropriation for medical services premiums related to the provision of in-home support.⁹

(2) For the 2014-15 state fiscal year, the general assembly anticipates that the department of health care policy and financing will receive \$152,002 in federal funds for medical services premiums related to the provision of in-home support. The appropriation in subsection (1) of this section is based on the assumption that the department will receive this amount of federal funds.¹⁰

⁷ This is a new version of the appropriation in House Bill 14-1034.

⁸ If the federal funds are subject to appropriation, they will be appropriated in the same manner as other state moneys.

⁹ If the state moneys are subject to an "(M)" notation, the following clause would be added to the second sentence of this type of appropriation clause: "and is subject to the "(M)" notation as defined in the general appropriation act for the same fiscal year."

¹⁰ This is a new version of an appropriation in House Bill 14-1357.

4. Appropriation to Cash Fund

SECTION __. Appropriation. (1) For the 2014-15 state fiscal year, \$1,200,000 is appropriated to the Colorado child care assistance cliff effect pilot program fund created in section 26-2-808 (2.5), C.R.S. This appropriation is from the general fund. The department of human services is responsible for the accounting related to this appropriation.

(2) For the 2014-15 state fiscal year, \$1,200,000 is appropriated to the department of human services. This appropriation is from reappropriated funds in the Colorado child care assistance cliff effect pilot program fund as a result of subsection (1) of this section. To implement this act, the department may use this appropriation for grants to counties participating in the cliff effect pilot program under the Colorado child care assistance program.¹¹

Recommendations

The existing appropriation clause, although functional, is difficult to understand. Without changing its meaning, the proposed new format improves readability by reordering the information; using three sentences, instead of one; and simplifying the language. Accordingly, OLLS and JBC Staff recommend that:

- (1) The Joint Budget Committee approve the format for appropriation clauses beginning with the 2015 legislative session; and
- (2) To facilitate this new format, the Committee sponsor legislation to codify the omitted elements of the existing clauses.

¹¹ This is a new version of an appropriation in Senate Bill 14-003.