

CHAPTER 401

APPROPRIATIONS

HOUSE BILL 04-1455

BY REPRESENTATIVE(S) Young, Spradley, Cadman, Garcia, Hefley, Williams T., Coleman, Merrifield, Salazar, and Weddig;
also SENATOR(S) Teck, Anderson, Andrews, Arnold, Chlouber, Evans, Hillman, Kester, and Lamborn.

AN ACT

CONCERNING THE ELIMINATION OF APPROPRIATIONS OF REVENUE MADE FOR THE PAYMENT OF THE EXPENSES OF THE STATE OF COLORADO, INCLUDING ITS DEPARTMENTS, AGENCIES, AND INSTITUTIONS, THAT ARE APPROPRIATED ON JANUARY 1, 2005.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The General Assembly hereby finds and declares that:

(a) The General Assembly holds plenary power to legislate, except only as limited by express or implied provisions of the state constitution.

(b) The General Assembly's plenary power is especially clear with regard to appropriations, which the Colorado Supreme Court described in *Colorado General Assembly v. Lamm*, 700 P.2d 508, 519 (1985), as the power to determine "the objects and level of support to which the public revenues may be put . . .".

(c) Section 2-4-215, Colorado Revised Statutes, sets forth how the General Assembly views its constitutional power of appropriations, including its right to increase and reduce the level of appropriations, and specifies that legislation passed by one General Assembly requiring an appropriation shall not bind future General Assemblies to provide any particular level of funding in the future.

(d) In setting the level of state funding, the General Assembly annually determines the amount of revenues to be appropriated for the various programs and functions of state government, taking into account many factors, including but not limited to the availability of revenues, the importance of the program, and needs of recipients when balanced with the needs of recipients under other state programs, as set forth in section 2-4-216, Colorado Revised Statutes.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(e) However, the General Assembly's plenary power of appropriation has been impaired and may be further limited in the future by the voters' approval of initiated amendments to the Colorado constitution that intend to either directly or indirectly mandate or "guarantee" a certain level of state funding for a particular state program or service.

(f) Such initiatives are the result of a process that lacks some of the critical elements of the representative system of state government, including debate, deliberation, flexibility, compromise, and transparency, and does not involve all the checks and balances that exist with representative state government.

(g) Such initiatives adversely affect the ability of the General Assembly to develop policies and funding priorities in a comprehensive and balanced manner, as most recently illustrated by the difficulties encountered by the General Assembly in trying to balance the state budget during the past few fiscal years in light of significant reductions of state revenues due to the economic downturn and initiated constitutional spending requirements and restrictions.

(2) The General Assembly further finds and declares that:

(a)(I) There are several potential initiated constitutional amendments that may be submitted to voters for approval at the November 2004 general election and that may further limit and impair the General Assembly's constitutionally based power to balance the funding priorities within state government and the needs of persons receiving services from state programs by mandating specified state funding levels for particular programs or services.

(II) Legislation should be enacted during the Second Regular Session of the Sixty-fourth General Assembly to preserve, to the greatest extent possible, the General Assembly's plenary power of appropriation by offsetting or at least minimizing any restrictions or limitations on its plenary power by such initiated constitutional amendments.

(III) House Bill 04-1455, enacted at the Second Regular Session of the Sixty-fourth General Assembly, is intended to preserve and maintain, to the greatest extent possible, the General Assembly's discretion in determining the level of state funding for health-related purposes with revenues that are derived from sources other than a source resulting from an initiated constitutional amendment adopted by the voters at the November 2004 general election that:

(A) Increases the state tax on cigarettes and tobacco products;

(B) Requires the new cigarette and tobacco products tax revenues to be spent on certain health-related purposes;

(C) States that the expenditures of such new tax revenues for some of the specified health-related purposes shall supplement, and not supplant, "revenues that are appropriated by the general assembly for health related purposes on the effective date of this section"; and

(D) Becomes effective on January 1, 2005.

(IV) House Bill 04-1455 eliminates most of the appropriations of state revenues on January 1, 2005, so that the amount of state revenues appropriated by the General Assembly for health-related purposes on said date is reduced.

(V) By enacting House Bill 04-1455, the General Assembly is reducing the level of state appropriations for health-related purposes that may be required in future fiscal years if any such initiated constitutional amendment is approved by voters and is preserving, to the greatest degree possible, the flexibility of the General Assembly to set the level of funding for state programs and functions, which is inherent in its plenary power of appropriation.

(b) It is the intent of the General Assembly that the fact that there are no appropriations of state revenues for many state programs and services on January 1, 2005:

(I) Shall not impair any obligation of the state for the payment of any salaries or other obligations for services that may be rendered to the state on said date;

(II) Shall not impair any person's eligibility to receive benefits or services from the state on said date, any person's eligibility to enroll in any state program on said date, or any person's enrollment in any state program on said date;

(III) Shall not impair any provider's ability to be reimbursed by the state for services provided on said date as authorized by law; and

(IV) Shall not impair any contracts or other agreements that are contingent upon the availability of appropriations.

(c) It is the intent of the General Assembly that state revenues appropriated for the state fiscal year commencing on July 1, 2004, and ending June 30, 2005, but not including January 1, 2005, may be used to make payments for any expenses or obligations incurred by the state on January 1, 2005, as authorized by law.

SECTION 2. The introductory portion to Section 2 (1) of House Bill 04-1422, enacted at the Second Regular Session of the Sixty-fourth General Assembly, is amended to read:

Section 2. **Appropriation.** (1) The sums in this section hereinafter specified, or so much thereof as may be necessary for the purpose, are hereby appropriated out of any moneys in the general fund, the indicated cash funds, and federal funds, for the payment of the ordinary operating costs of the executive, legislative, and judicial departments of the state, and of its agencies and institutions, for and during the fiscal year beginning July 1, 2004, BUT NOT INCLUDING JANUARY 1, 2005, and:

SECTION 3. Section 17 of House Bill 04-1422, enacted at the Second Regular Session of the Sixty-fourth General Assembly, is amended to read:

Section 17. **Effective date - applicability.** This act shall take effect upon passage; except that each of subsections 1 through 10 of section 15 of this act shall

take effect only if legislation allowing designation of institutions of higher education as enterprises, as the term is used in Article X of Section 20 of the Colorado constitution, is enacted by the Sixty-fourth General Assembly and becomes law, and the governing board named in the respective subsection designates the institution or group of institutions under its control as an enterprise pursuant to such legislation; AND SECTION 2 OF THIS ACT SHALL APPLY TO THE STATE FISCAL YEAR COMMENCING ON JULY 1, 2004, AND ENDING ON JUNE 30, 2005; EXCEPT THAT SAID SECTION 2 SHALL NOT APPLY TO JANUARY 1, 2005.

SECTION 4. The introductory portions to Section 17 (1), (2), (3), (4), and (5) of House Bill 04-1421, enacted at the Second Regular Session of the Sixty-fourth General Assembly, are amended to read:

Section 17. **Appropriation - adjustments to the 2004 long bill.** (1) For the implementation of this act, appropriations made in the annual general appropriation act to the department of education, for the fiscal year beginning July 1, 2004, BUT NOT INCLUDING JANUARY 1, 2005, shall be adjusted as follows:

(2) For the implementation of this act, appropriations made in the annual general appropriation act to the department of health care policy and financing, for the fiscal year beginning July 1, 2004, BUT NOT INCLUDING JANUARY 1, 2005, shall be adjusted as follows:

(3) For the implementation of this act, appropriations made in the annual general appropriation act to the department of human services, for the fiscal year beginning July 1, 2004, BUT NOT INCLUDING JANUARY 1, 2005, shall be adjusted as follows:

(4) For the implementation of this act, appropriations made in the annual general appropriation act to the department of military and veterans affairs, for the fiscal year beginning July 1, 2004, BUT NOT INCLUDING JANUARY 1, 2005, shall be adjusted as follows:

(5) For the implementation of this act, appropriations made in the annual general appropriation act to the department of public health and environment for the fiscal year beginning July 1, 2004, BUT NOT INCLUDING JANUARY 1, 2005, shall be adjusted as follows:

SECTION 5. The introductory portion to Section 2 (1) of House Bill 04-1419, enacted at the Second Regular Session of the Sixty-fourth General Assembly, is amended to read:

Section 2. **Appropriation - adjustments to the 2004 long bill.** (1) For the implementation of this act, appropriations made in the annual general appropriation act for the fiscal year beginning July 1, 2004, BUT NOT INCLUDING JANUARY 1, 2005, shall be adjusted as follows:

SECTION 6. The introductory portion to Section 2 (1) of House Bill 04-1416, enacted at the Second Regular Session of the Sixty-fourth General Assembly, is amended to read:

Section 2. **Appropriation - adjustments in 2004 long bill.** (1) For the

implementation of this act, appropriations made in the annual general appropriation act to the department of health care policy and financing for the fiscal year beginning July 1, 2004, BUT NOT INCLUDING JANUARY 1, 2005, shall be adjusted as follows:

SECTION 7. Section 3 of House Bill 04-1415, enacted at the Second Regular Session of the Sixty-fourth General Assembly, is amended to read:

Section 3. **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 health care policy and financing, for the state nursing facility service program created in section 26-15-202 (1), Colorado Revised Statutes, for the fiscal year beginning July 1, 2004, BUT NOT INCLUDING JANUARY 1, 2005, eight hundred thirty-eight thousand five hundred twenty-eight dollars (\$838,528), or so much thereof as may be necessary, for the implementation of this act.

SECTION 8. Section 2 (1) and (2) and the introductory portion to Section 2 (3) of House Bill 04-1414, enacted at the Second Regular Session of the Sixty-fourth General Assembly, are amended to read:

Section 2. **Appropriation - adjustments to the 2004 long bill.** (1) In addition to any other appropriation, there is hereby appropriated, to the department of human services, division of child welfare, to help defray counties' costs of performing administrative functions related to obtaining federal reimbursement moneys available under the Title IV-E program, for the fiscal year beginning July 1, 2004, BUT NOT INCLUDING JANUARY 1, 2005, the sum of one million six hundred thousand dollars (\$1,600,000). Said sum shall be cash funds exempt from the excess federal Title IV-E reimbursements cash fund created in section 26-1-111 (2) (d) (II) (C), Colorado Revised Statutes.

(2) In addition to any other appropriation, there is hereby appropriated, to the department of human services, for allocation to the counties for the provision of assistance, child care assistance, social services, and child welfare services, for the fiscal year beginning July 1, 2004, BUT NOT INCLUDING JANUARY 1, 2005, the sum of two million five hundred thousand dollars (\$2,500,000). Said sum shall be cash funds exempt from the excess federal Title IV-E reimbursements cash fund created in section 26-1-111 (2) (d) (II) (C), Colorado Revised Statutes.

(3) For the implementation of this act, appropriations made in the annual general appropriation act for the fiscal year beginning July 1, 2004, BUT NOT INCLUDING JANUARY 1, 2005, shall be adjusted as follows:

SECTION 9. Article 1 of title 25.5, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

25.5-1-112. Drug-purchasing pool - report - repeal. (1) THE STATE DEPARTMENT SHALL, WITHIN EXISTING APPROPRIATIONS, EVALUATE WHETHER THE STATE SHOULD APPLY TO THE FEDERAL GOVERNMENT TO JOIN AN EXISTING MULTI-STATE DRUG-PURCHASING COOPERATIVE FOR THE PURPOSE OF FACILITATING AN ECONOMICAL PURCHASE OF PRESCRIPTION DRUGS FOR STATE MEDICAID RECIPIENTS.

(2) ON OR BEFORE NOVEMBER 1, 2004, THE STATE DEPARTMENT SHALL REPORT TO THE EXECUTIVE COMMITTEE OF THE LEGISLATIVE COUNCIL AND THE HEALTH, ENVIRONMENT, WELFARE, AND INSTITUTIONS COMMITTEES OF THE SENATE AND THE HOUSE OF REPRESENTATIVES THE STATE'S OPTIONS REGARDING THE APPLICATION TO JOIN AN EXISTING MULTI-STATE DRUG-PURCHASING COOPERATIVE AND WHETHER ANY LEGISLATIVE CHANGES WOULD BE NECESSARY.

(3) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2005.

SECTION 10. Effective date. (1) Sections 1 to 8 of this act shall take effect only if the registered electors of the state of Colorado voting at the statewide election to be held in November 2004 approve any ballot question submitted for their approval or rejection at said election that proposes a constitutional amendment increasing taxes on cigarettes and tobacco products.

(2) In addition, section 4 of this act shall take effect only if House Bill 04-1421 is enacted at the Second Regular Session of the Sixty-fourth General Assembly and becomes law.

(3) In addition, section 5 of this act shall take effect only if House Bill 04-1419 is enacted at the Second Regular Session of the Sixty-fourth General Assembly and becomes law.

(4) In addition, section 6 of this act shall take effect only if House Bill 04-1416 is enacted at the Second Regular Session of the Sixty-fourth General Assembly and becomes law.

(5) In addition, section 7 of this act shall take effect only if House Bill 04-1415 is enacted at the Second Regular Session of the Sixty-fourth General Assembly and becomes law.

(6) In addition, section 8 of this act shall take effect only if House Bill 04-1414 is enacted at the Second Regular Session of the Sixty-fourth General Assembly and becomes law.

(7) This section and sections 9 and 11 of this act shall take effect upon passage.

SECTION 11. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Became Law: June 5, 2004