

CHAPTER 57

GOVERNMENT - STATE

HOUSE BILL 08-1321

BY REPRESENTATIVE(S) Buescher, Pommer, White, Butcher, Benefield, and Labuda;
also SENATOR(S) Keller, Morse, and Johnson.

AN ACT

**CONCERNING THE DESIGNATION OF THE PURPOSES FOR WHICH CERTAIN LINE ITEM APPROPRIATIONS
ARE MADE IN THE ANNUAL GENERAL APPROPRIATION ACT.**

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) Pursuant to article III of the state constitution, the general assembly has plenary power over appropriations of public funds and the power to attach conditions upon the expenditure of those appropriations.

(b) The annual general appropriation act provides funding for the expenses of the executive, legislative, and judicial departments of the state of Colorado, and of its agencies and institutions for and during each fiscal year.

(c) The general assembly appropriates specific sums of money dedicated to a stated purpose by line item to such departments, agencies, and institutions for specific purposes in the annual general appropriations act.

(d) The stated purposes of certain items of appropriation that are commonly made to the various departments, agencies, and institutions throughout the annual general appropriations act are specified by a term in the item that precedes the amount of the appropriation and that is historically known as a headnote.

(e) Each headnote is an indivisible part of the item of appropriation to which it relates and is integral to and legally interdependent with other portions of the item of which it is a part.

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

(f) By defining the headnotes utilized for certain items of appropriation, the purpose for which the public funds are appropriated is stated consistently for each such department, agency, or institution throughout the annual general appropriation act.

(g) The headnotes further enable the general assembly to honor its own constitutional obligation to determine and specify the purposes for which it appropriates public funds throughout the state government, while leaving daily administration of the appropriated funds to the departments, agencies, and institutions that receive such funds.

(2) Therefore, the general assembly finds and declares that defining the headnotes for certain items of appropriation in the annual general appropriations act by statute is necessary and appropriate and is consistent with both its plenary power over appropriations and with the separation of powers between the branches of state government.

SECTION 2. Part 1 of article 75 of title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

24-75-112. Annual general appropriation act - headnote definitions - general provisions - footnotes. (1) AS USED IN THE ANNUAL GENERAL APPROPRIATION ACT, THE FOLLOWING DEFINITIONS AND GENERAL PROVISIONS SHALL APPLY FOR THE HEADNOTE TERMS PRECEDING AND SPECIFYING THE PURPOSE OF CERTAIN LINE ITEMS OF APPROPRIATION:

(a) (I) "CAPITAL OUTLAY" MEANS:

(A) EQUIPMENT, FURNITURE, MOTOR VEHICLES, SOFTWARE, AND OTHER ITEMS THAT HAVE A USEFUL LIFE OF ONE YEAR OR MORE;

(B) 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;

(C) NEW STRUCTURES, MEANING THE CONSTRUCTION OF ENTIRELY NEW BUILDINGS, INCLUDING THE VALUE OF MATERIALS AND LABOR, EITHER STATE-SUPPLIED OR SUPPLIED BY CONTRACT; OR

(D) 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.

(II) "CAPITAL OUTLAY" DOES NOT INCLUDE THOSE THINGS DEFINED AS CAPITAL CONSTRUCTION BY SECTION 24-75-301 (1).

(b) "CENTRALIZED APPROPRIATION" MEANS THE APPROPRIATION OF FUNDS TO AN EXECUTIVE DIRECTOR OF A DEPARTMENT OR A CENTRAL ADMINISTRATIVE PROGRAM INTENDED FOR SUBSEQUENT ALLOCATION AND EXPENDITURE AT AND AMONG A

DEPARTMENT'S DIVISIONS, PROGRAMS, AGENCIES, OR LONG BILL GROUPS IN ORDER TO REFLECT THE AMOUNT OF SUCH RESOURCES ACTUALLY USED IN EACH PROGRAM OR DIVISION. SUCH CENTRALIZED APPROPRIATIONS MAY INCLUDE SALARY SURVEY, PERFORMANCE-BASED PAY OR ANNIVERSARY INCREASES, SENIOR EXECUTIVE SERVICE, SHIFT DIFFERENTIAL, GROUP HEALTH AND LIFE INSURANCE, CAPITAL OUTLAY, ADP CAPITAL OUTLAY, INFORMATION TECHNOLOGY ASSET MAINTENANCE, LEGAL SERVICES, PURCHASE OF SERVICES FROM COMPUTER CENTER, MULTIUSE NETWORK PAYMENTS, VEHICLE LEASE PAYMENTS, LEASED SPACE, LEASE PURCHASE, PAYMENT TO RISK MANAGEMENT AND PROPERTY FUNDS, SHORT-TERM DISABILITY INSURANCE, UTILITIES, COMMUNICATIONS SERVICES PAYMENTS, AMORTIZATION EQUALIZATION DISBURSEMENTS, SUPPLEMENTAL AMORTIZATION EQUALIZATION DISBURSEMENTS, ADMINISTRATIVE LAW JUDGE SERVICES, AND CENTRALIZED ADP. AS PROVIDED IN PARAGRAPH (1) OF THIS SUBSECTION (1), CAPITAL OUTLAY IS INCLUDED WITHIN THE APPROPRIATION FOR "OPERATING EXPENSES".

(c) "COMMUNICATIONS SERVICES PAYMENTS" MEANS PAYMENTS TO THE DEPARTMENT OF PERSONNEL FOR THE COST OF SERVICES FROM THE STATE'S PUBLIC SAFETY COMMUNICATIONS INFRASTRUCTURE.

(d) (I) EXCEPT AS OTHERWISE PROVIDED IN SUBPARAGRAPH (IV) OF THIS PARAGRAPH (d), "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 (d), "STATE EMPLOYEE" MEANS A PERSON EMPLOYED BY THE STATE, WHETHER OR NOT SUCH PERSON IS A CLASSIFIED EMPLOYEE IN THE STATE PERSONNEL SYSTEM.

(IV) 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.

(V) THE NUMBER OF FTE SPECIFIED IN A PARTICULAR ITEM OF APPROPRIATION IS THE NUMBER UTILIZED TO CALCULATE THE AMOUNT APPROPRIATED AND NECESSARY TO FUND ANY COMBINATION OF PART-TIME POSITIONS OR FULL-TIME POSITIONS EQUAL TO SUCH NUMBER FOR THE FISCAL YEAR TO WHICH THE ANNUAL GENERAL APPROPRIATION ACT PERTAINS IN ACCORDANCE WITH THE DEFINITION CONTAINED

IN SUBPARAGRAPHS (I) AND (II) OF THIS PARAGRAPH (d) AND IS NOT A LIMITATION ON THE NUMBER OF FTE THAT MAY BE EMPLOYED. NO DEPARTMENT SHALL MAKE A MATERIAL CHANGE IN THE NUMBER OF FTE SPECIFIED IN A PARTICULAR ITEM OF APPROPRIATION PRIOR TO NOTIFYING THE JOINT BUDGET COMMITTEE IN WRITING OF SUCH CHANGE.

(e) "HEALTH, LIFE, AND DENTAL" MEANS THE STATE CONTRIBUTION FOR GROUP BENEFITS PLANS PURSUANT TO SECTION 24-50-609. THESE CONTRIBUTION AMOUNTS SHALL BE EFFECTIVE IN ACCORDANCE WITH SECTION 24-50-104 (4) (d) (II).

(f) "INDIRECT COST ASSESSMENT" MEANS REIMBURSEMENTS MADE TO AN AGENCY OF THE STATE FROM FEDERAL FUNDS, OTHER NONSTATE FUNDS, CASH FUNDS, OR REAPPROPRIATED FUNDS FOR THE INDIRECT EXPENSES THAT HAVE BEEN INCURRED BY THE STATE IN OPERATING SUCH PROGRAMS. THESE RECOVERIES ARE MADE BY THE DEPARTMENTS USING THE APPROVED INDIRECT COST RATE, AS REQUIRED BY THE STATE FISCAL RULES.

(g) "LEASED SPACE" MEANS THE USE AND ACQUISITION OF OFFICE FACILITIES AND OFFICE AND PARKING SPACE PURSUANT TO A RENTAL AGREEMENT.

(h) "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.

(i) "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.

(j) "MOTOR VEHICLE" MEANS A MOTOR TRUCK DESIGNATED THREE-QUARTERS OF ONE TON OR LESS, AUTOMOBILE, OR OTHER SELF-PROPELLED VEHICLE.

(k) "MULTIUSE NETWORK PAYMENTS" MEANS PAYMENTS TO THE DEPARTMENT OF PERSONNEL FOR THE COST OF ADMINISTRATION AND THE USE OF THE STATE'S TELECOMMUNICATIONS NETWORK.

(l) "OPERATING EXPENSES" MEANS THOSE SUPPLIES, MATERIALS, ITEMS, SERVICES, AND TRAVEL-RELATED EXPENSES NEEDED TO ADMINISTER THE PROGRAMS DELEGATED TO THE DEPARTMENTS, EXCEPT FOR PERSONAL SERVICES, LEGAL SERVICES, OR CAPITAL CONSTRUCTION.

(m) "PERSONAL SERVICES" MEANS:

(I) ALL SALARIES AND WAGES, INCLUDING OVERTIME, WHETHER TO FULL-TIME, PART-TIME, OR TEMPORARY EMPLOYEES OF THE STATE, AND ALSO INCLUDES THE STATE'S CONTRIBUTION TO THE PUBLIC EMPLOYEES' RETIREMENT ASSOCIATION AND THE STATE'S SHARE OF FEDERAL MEDICARE TAX PAID FOR STATE EMPLOYEES;

(II) 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. NO APPROPRIATION FOR SUCH SERVICES SHALL BE EXPENDED ON THE PROVISION OF LEGAL SERVICES BY THE DEPARTMENT OF LAW OR BY A PRIVATE ATTORNEY OR LAW FIRM PRIOR TO NOTIFYING THE JOINT BUDGET COMMITTEE IN WRITING OF SUCH CHANGE. PAYMENTS FOR PROFESSIONAL SERVICES SHALL BE IN COMPLIANCE WITH SECTION 24-30-202 (2) AND (3).

(III) 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).

(IV) TUITION, MEANING PAYMENTS FOR GRADUATE OR UNDERGRADUATE COURSES TAKEN BY STATE EMPLOYEES AT INSTITUTIONS OF HIGHER EDUCATION; OR

(V) PAYMENTS FOR UNEMPLOYMENT CLAIMS OR INSURANCE AS REQUIRED BY THE DEPARTMENT OF LABOR AND EMPLOYMENT.

(n) "PUEBLO DATA ENTRY CENTER PAYMENTS" MEANS PAYMENTS TO THE DEPARTMENT OF PERSONNEL FOR THE COST OF DATA ENTRY SERVICES FROM THE DATA ENTRY CENTER.

(o) "PURCHASE OF SERVICES FROM COMPUTER CENTER" MEANS THE PURCHASE OF AUTOMATED DATA PROCESSING SERVICES FROM THE GENERAL GOVERNMENT COMPUTER CENTER.

(p) "SHORT-TERM DISABILITY" MEANS THE STATE CONTRIBUTION FOR EMPLOYEE SHORT-TERM DISABILITY PURSUANT TO SECTION 24-50-603 (13).

(q) "UTILITIES" MEANS WATER, SEWER SERVICE, ELECTRICITY, PAYMENTS TO ENERGY SERVICE COMPANIES, PURCHASE OF ENERGY CONSERVATION EQUIPMENT, AND ALL HEATING FUELS.

(r) "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.

(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.

(3) WHERE NO PURPOSE IS SPECIFIED OR WHERE A SPECIAL PROGRAM IS SPECIFIED, THE APPROPRIATION SHALL BE FOR OPERATING EXPENSES AND PERSONAL SERVICES.

(4) EXPENDITURES OF FUNDS APPROPRIATED FOR THE PURCHASE OF GOODS AND SERVICES SHALL BE IN ACCORD WITH SECTION 17-24-111, C.R.S., WHICH REQUIRES INSTITUTIONS, AGENCIES, AND DEPARTMENTS TO PURCHASE SUCH GOODS AND SERVICES AS ARE PRODUCED BY THE DIVISION OF CORRECTIONAL INDUSTRIES FROM SAID DIVISION.

SECTION 3. Applicability. This act shall apply to the annual general appropriation act for the fiscal year 2008-2009 and each fiscal year thereafter.

SECTION 4. 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.

Approved: March 24, 2008