

JOINT BUDGET COMMITTEE



INTERIM SUPPLEMENTAL BUDGET REQUESTS FY 2019-20

CAPITAL CONSTRUCTION

JBC WORKING DOCUMENT - SUBJECT TO CHANGE
STAFF RECOMMENDATION DOES NOT REPRESENT COMMITTEE DECISION

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INTERIM SUPPLEMENTAL REQUESTS

F2 AND F3 COTTAGE RENOVATION, CMHIFL (FY 2019-20)

	REQUEST	RECOMMENDATION
TOTAL	(\$14,690,959)	\$1,649,027
FTE	0.0	0.0
Capital Construction Fund	(14,690,959)	1,649,027
Cash Funds	0	0
Federal Funds	0	0

Does JBC staff believe the request satisfies the interim supplemental criteria of Section 24-75-111, C.R.S.? [The Controller may authorize an overexpenditure of the existing appropriation if it: (1) Is approved in whole or in part by the JBC; (2) Is necessary due to unforeseen circumstances arising while the General Assembly is not in session; (3) Is approved by the Office of State Planning and Budgeting (except for State, Law, Treasury, Judicial, and Legislative Departments); (4) Is approved by the Capital Development Committee, if a capital request; (5) Is consistent with all statutory provisions applicable to the program, function or purpose for which the overexpenditure is made; and (6) Does not exceed the unencumbered balance of the fund from which the overexpenditure is to be made.] **YES**

Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria? [An emergency or act of God; a technical error in calculating the original appropriation; data that was not available when the original appropriation was made; or an unforeseen contingency.] **YES**

Explanation: The Department states that its request meets the criterion of "An emergency or act of God". However, this request is not for an overexpenditure but rather for an interim budget process related to a capital construction project. On that basis, JBC staff agrees that this request meets interim supplemental criteria, but would classify this item as an unforeseen contingency rather than an emergency or act of God.

DEPARTMENT REQUEST: Related to the F2 and F3 Cottage Renovation, Colorado Mental Health Institute at Fort Logan capital construction project, the Department of Human Services (DHS or Department) requests (1) zero dollars of new funding; (2) permission to use a portion (\$1.6 million) of the project appropriation (\$17.8 million) to fund a new, less expensive alternate project and discontinue the original project (change of scope) with the project to be renamed "Renovation and Retrofitting of Units, Colorado Mental Health Institute at Fort Logan"; and (3) revert the balance (\$14.7 million) of the project funding to the General Fund.

STAFF RECOMMENDATION: Staff recommends that the Committee approve the following:

1) A change in project scope to allow the Department to proceed with the new, alternate project at the Colorado Mental Health Institute at Fort Logan (CMHIFL) estimated at \$1,649,027, anticipated to be completed in 9-12 months, that would convert approximately 44 civil beds to "flex" beds that could accommodate forensic (competency-related services) placements. Technically, this 1331 change of scope authorization on its own would allow the Department to spend currently appropriated funds on the less expensive alternate project.

2) Staff recommends that the Committee deny the request to discontinue work on the original F2 and F3 Cottage Renovation project at CMHIFL that will provide 44 forensic beds, anticipated to be completed by the end of 2021. This recommendation requires that the change in scope recommendation in number 1 above will require additional funding of \$1.6 million and will not generate or result in an eventual reversion of \$14.7 million. This includes a recommendation to rename

the project: "F2 and F3 Cottage Renovation and Retrofitting of Units, Colorado Mental Health Institute at Fort Logan".

STAFF ANALYSIS:

CAPITAL PROJECT COST AND SPECS OVERVIEW

The Department has identified a capital construction cost of \$1,649,027 for the alternative project that designs and retrofits two units at Fort Logan from "civil" beds to flexible, civil or forensic beds. The Department identifies expenditures totaling \$1,495,865 for the completed design of the original F2 and F3 Cottage Renovation project. Thus, the Department identifies a reversion of \$14,690,959 from the project's original appropriation of \$17,835,851.

The original project is an expansion of 44 forensic beds. The alternate project is expected to convert two units or approximately 44 civil beds to flex beds that could accommodate civil or forensic (competency-related) placements.

Construction components of the alternate project include the installation of anti-climb mesh, facility upgrades for suicide and flight risk-mitigation, and the addition of a sally port.

1331 TECHNICAL NOTE

While the 1331 process is typically referred to as an 'interim supplemental' process, it is more properly an interim overexpenditure process. This process allows overexpenditures for budget items when the General Assembly is not in session. This process does not include provisions for negative appropriation adjustments that would generate a reversion through a 1331 action. Approval of the Department's request will necessitate a negative appropriation adjustment to the FY 2019-20 appropriation in the January supplemental process and bill. The reversion identified as savings for the General Fund would further entail a transfer by bill from the Capital Construction Fund to the General Fund in order to accommodate the reversion as requested.

Staff's recommendation provides approval of the Department's request within the bounds of the 1331 process. The additional portions of the Department request related to generating General Fund savings can only be addressed in supplemental appropriation and transfer bills during the legislative session.

PROGRAMMATIC CONSIDERATIONS

REDUCING CIVIL BEDS

The Consent Decree specifies that the Department cannot reduce the number of civil beds available at Ft. Logan with forensic beds in order to assist the Department in becoming compliant with the Consent Decree.

In order to utilize these "flex" beds as forensic beds, staff assumes one of two things would need to happen: (1) the Department would need to be released from the terms of the Consent Decree [i.e. be in compliance for a period of 12 months prior to July 2022] or (2) the Department would need to go to court, likely with an argument that the beds were converted based on budgetary decisions, not compliance decisions.

Given the budget environment, it seems likely that the Department would receive a favorable ruling. However, the Committee should be aware that there is some risk in approving the budget request to convert the beds when, under current circumstances, they cannot be used for forensic purposes without being in violation of the Consent Decree.

Additionally, a decrease in the number of available civil beds is likely to impact community providers. These civil beds are already in demand; reducing their availability will limit options for individuals who need a higher level of care. Funding for community programs was impacted by the budget balancing actions for FY 2020-21. Further reducing civil capacity in the system is likely to increase the pressure on these providers and increase the impact to individuals seeking services.

CONSENT DECREE STATUS UPDATE

COVID-19 Impact

COVID-19 has caused significant delays with admissions to the Colorado Mental Health Institute at Pueblo (CMHIP) and the jail based restoration programs. In order to limit the introduction of the virus, admissions are happening by cohort. This allows for a 14-day monitoring period before individuals are admitted to the program units within the hospital or at the two jail-based restoration programs. Additionally, the Department introduced new processes for video-based competency evaluations in all settings. This was established to comply with court orders, as well as the Governor’s stay at home and travel restriction orders.

There have been no updates to the Consent Decree or related legal action as a result of COVID-19. The parties are using the existing language in the Consent Decree to place individuals on *Individual Special Circumstances* (ISC), which stops fine payments for certain individuals. Individuals can be placed on an ISC when there is a circumstance beyond the Department’s control, where the Department would otherwise be able to comply, that delays the *offer of admission* to a pretrial detainee. The ISC is being utilized to address a number of admissions or evaluation delays related to COVID-19.

Fines and Waitlist

The Department reports that on August 31, 2020, there were a total of 40 individuals awaiting admission for inpatient restoration services; eight of these individuals met the criteria for being over the consent decree specified timeframes, resulting in fines. As of that date, 63 individuals had been placed on ISC.

For the beginning of FY 2020-21, fines have been significantly lower than expected, primarily related to the ISCs. In July and August, the Department incurred \$86,000 and \$19,000 in fines. Included below are actual FY 2019-20 and FY 2020-21 projections for these months (pre-pandemic).

MONTHLY FINES			
	FY 2019-20 Actual	FY 2020-21 Projected*	FY 2020-21 Actual
July	\$1,403,400	\$501,000	\$86,000
August	1,582,200	816,000	19,000

**March 2020, pre-pandemic*

At this time, the Department does not feel comfortable projecting fines or waitlists. Their forecasting is based on historical data and trends. COVID-19 has disrupted the process, and therefore, the Department does not feel it can accurately forecast. However, particularly given the anticipated opening of the L2 Unit at CMHIP at the end of 2020, the Department is hopeful that it can reach compliance with the Consent Decree by the end of the fiscal year.

While the Department anticipates compliance with the Consent Decree, it does not necessarily mean that increased capacity will not be needed in the future. Prior to the pandemic, the number of court-ordered competency restorations and evaluations were steadily increasing year-over-year. The Department anticipates a continued need for forensic beds. Even without the consent decree requirements, the Department will need to maintain levels of service that prevent future legal action and which provide appropriate levels of care.

OPERATING COSTS

This request addresses capital needs only. For the fiscal year in which either the flex beds or new cottages come online, the Committee should expect a subsequent operating request. While staff does not have exact numbers at this time, the Department estimates that this request could require approximately \$1.0 million in operating costs, primarily for increased security needs for forensic versus civil beds, as well as forensic treatment staff.

For the F2 and F3 cottages (44 total beds), the Department estimates operating and staffing would total \$6.2 million General Fund and 49.3 FTE in FY 2021-22, annualizing to \$9.1 million General Fund and 84.5 FTE in FY 2022-23.

CAPITAL BUDGETING AND DHS-SPECIFIC CONCERNS

Staff is concerned that the capital budget, particularly in this request, is not being approached from a perspective of long-range facility and program planning needs. When capital construction is approached in this way, requests are made on the basis of short-term needs, often driven primarily by immediate fiscal considerations that are detached from long-term program outcomes.

Since 2015, staff has been critical of the Department's approach to its capital construction needs and has communicated those concerns to the Committee since that time. The following is from staff's FY 2019-20 briefing document from December 19, 2018, addressing several Department capital requests related to competency services, that included the project in this 1331 request.

DHS is a particularly program-intensive state agency, delivering a fairly complex spectrum of client care services. It is reasonable that such a program-intensive department will focus its energy on the need for additional resources for annual program operating needs first. That is not to suggest that facility needs are not requested by the Department. They are sought annually through the capital construction budget, and increasingly in recent years through the operating budget as well. They are consistently a mix of large to very large – Department-wide master plan, campus infrastructure capital renewal, or facility replacement requests, medium and ongoing – "suicide mitigation" projects which appear to be perpetual and interminable, and relatively small – controlled maintenance to keep current facilities updated just enough relative to life safety, security, and accreditation requirements.

The Department's current request for additional beds for "competency services" is a case where the Department is pushing a facility-driven solution that will lead to substantial program build-out. But,

in most cases, facility needs are generally not considered or built into program expansion plans and change requests. Facility needs remain afterthoughts relative to constant, incremental program changes, until the point is reached that very large facility needs have to be addressed but money is only available for annual, "band-aid" maintenance projects: converting existing space and adding beds; suicide mitigation; life safety improvements. DHS program priorities do not include or account for an incremental recognition of facility needs, because from the Department's perspective:

- *To recognize and fully account for the cost of facilities might endanger a request for policy change and program expansion due to the additional, incremental cost for facilities.*
- *Facilities can always be addressed after the fact, when they are absolutely necessary for continued client, staff, and public safety and security.*
- *Facilities will necessarily be funded when it is made clear to budget authorities, through life safety and security failures, that additional money has to be spent on facilities due to "public emergency".*

In case of point, staff's discussion with the Committee at that briefing included discussions that centered on Committee members' sense that there was no choice regarding these capital requests because building out facility capacity for competency-related services was genuinely an emergency related to the consent decree and payment of fines. This pattern that staff had first identified and communicated to the Committee in 2015 was confirmed through that discussion. In fairness, it was communicated as an emergency, genuinely appeared to be an emergency, and the Committee would respond as such. Nevertheless, this is consistent with staff's assessment of the Department's organizational management behavior related to capital assets and facilities and lack of prioritization of facility planning.

The Department states that it anticipates completing the original project in a future year in which there is an improved revenue situation. It is staff's opinion that this project will be requested in a future year and the price tag will have increased at that time. It is also possible that such a request might be made sooner rather than later if competency-based services were to spike, and once again create a crisis for the Department, in the immediate post-Covid timeframe.

In conversation with staff, Department representatives would not state that the anticipated savings of \$14.7 million would function as an offset or replacement of funds relative to program operating base reductions that might be included in the November budget request. However, it was made clear by the Division Director that having access to an additional \$14.7 million in state funds was more critical and necessary for program funding than for this capital item. There was a clear ranking of preferences which helps to inform the request generally.

Communication with the Office of the State Architect regarding background and technical review also suggests that the Department's request to discontinue the project is related to reflecting budget cuts required by OSPB.

While staff is confident that the request is a response to the need to reflect Department budget savings, staff is fine assessing the request on the basis that there may not be a clear dollar-for-dollar tie, much less nexus, between this request and potential budget cuts that the Department may need to reflect in its budget submission to OSPB. However, staff is concerned that funds appropriated for a capital

project through the capital construction budget process are now identified as a potential source of state funds that might augment program operating funds in the current revenue environment. Nevertheless, staff also accepts that this too may be a reasonable approach to balancing the current revenue situation and would leave that judgment entirely to the Committee.

CONCLUSION

In staff's opinion, the \$1.6 million cost for the alternate project is low enough relative to the cost of the original project to justify funding the alternate project even with the tenuous legal considerations discussed in the program section and the risk of loss of civil beds. On that basis, staff recommends that the Committee approve the alternate project.

However, the alternate project does not deliver the certainty that the original project appropriation was designed to deliver for this particular policy area. The alternate project does not fundamentally and more permanently address the concern that was expressed at the time that the capital construction project was approved and funded. And in accepting the Department's rationale that flex beds are a reasonable, alternative program outcome, staff has not assessed or analyzed the potential loss of civil beds which may lead to other pressures on the budget to replace that program capacity loss.

If the Committee believes that the Department will soon enough be released from the requirements of the decree and on its way to actually resolving the ongoing policy and program issues brought to bear through this legal proceeding, the Committee should approve the Department's request to (1) fund the alternate project, (2) discontinue the original project, and (3) generate cost savings, given the current window of opportunity to discontinue the original project. However, on this basis, staff assumes that the Committee also believes that there would not be a need to resume the original project at a future time.

However, if the Committee believes that this policy issue will require continued, sustained effort to address competency-related services into the years beyond the Department's requirements within the consent decree, then the original project likely remains a reasonable step, and is likely the necessary next step, to address this issue from an internal capacity perspective. It is staff's opinion that this scenario is more likely, and on that basis, staff recommends that the Committee deny the request to discontinue the current project in order to secure and reflect operating budget savings from the capital budget reversion.
