MEMORANDUM

JOINT BUDGET COMMITTEE

TO	JBC Members
FROM	JBC Staff
DATE	March 10, 2020
SUBJECT	Comeback Packet 1

Included in this packet are staff comeback memos for the following items:

Public Health and Environment (Tom Dermody): BA1 Leased Space Expansion

Public Health and Environment (Andrew Forbes): Technical Adjustment to Prevention Services Division

Agriculture (Scott Thompson):
- Roll-forward Authority for Workforce Development Program
- R8 Unused Spending Authority
- Industrial Hemp Registration Program Cash Fund Waiver Request

Public Safety (Justin Brakke):
- R1 Performance Based Contracting
- Community Corrections Placements Adjustment
- Cash Fund Waiver for the Division of Fire Prevention and Control
- Technical Corrections

MEMORANDUM

JOINT BUDGET COMMITTEE

TO	Joint Budget Committee
FROM	Tom Dermody, JBC Staff (303-866-4963)
DATE	March 12, 2020
SUBJECT	Technical Comeback – CDPHE. BA1 Leased Space Expansion

During staff's figure setting presentation for the Department of Public Health and Environment, Administration and Environmental Divisions, on February 25, 2020, JBC staff misidentified the fund type for the recommended appropriation for BA1. Staff incorrectly showed the recommended appropriation from the Indirect Cost Recovery Fund, created in Section 24-75-1401 (2), C.R.S., as reappropriated funds when it should have been cash funds. The $1,350,271 affected is for renovating the newly leased space. Staff requests permission to adjust the staff recommendation for BA1 to accurately and correctly reflect the fund source for these renovation costs.

TECHNICAL ADJUSTMENT - BA1 LEASED SPACE EXPANSION			
	TOTAL FUNDS	CASH FUNDS	REAPPROPRIATED FUNDS
Figure setting recommendation	$2,757,569	$345,010	$2,412,559
Requested adjustment	2,757,569	1,695,281	1,062,288
Change summary	**$0**	**$1,350,271**	**($1,350,271)**

MEMORANDUM

JOINT BUDGET COMMITTEE

TO	Joint Budget Committee
FROM	Andrew Forbes, JBC Staff (303-866-2062)
DATE	March 9, 2020
SUBJECT	Technical Adjustment to Prevention Services Division

During the 2019 legislative session the General Assembly passed S.B. 19-227: Harm Reduction Substance Use Disorders. The bill created a new cash fund and grant program to be created within the Department of Public Health and Environment to purchase opiate antagonists, such as Naloxone, in bulk and then sell at a discounted price to eligible entities (schools, local governments, and public places with automated external defibrillators).

During the staff figure setting presentation for the Department on 2/25/20 the Committee approved a new line item created specifically from S.B. 19-227 called titled, "Opiate Antagonist Bulk Purchase". The line was created with the FY 19-20 approved $621,070 total funds, including $396,070 General Fund and $225,000 cash funds already allocated. For FY 20-21, an annualization of S.B. 19-227 was to occur bringing the total appropriation to $1,103,048, including $153,048 General Fund and $950,000 cash funds. The request from the Department included the bill's annualization in the Prevention Services Division Administration line item. Staff is requesting permission to move this adjustment to the Opiate Antagonist Bulk Purchase line item. The proposed changes for each sub-division are outlined in the table below. The Department is in agreement with staff for this technical adjustment.

RECOMMENDED CHANGES TO FY 2020-21 APPROPRIATION DUE TO S.B. 19-227 ANNUALIZATION

INITIAL RECOMMENDATION						
LINE ITEM	GF	CF	RF	FF	FTE	TOTAL
(9) Prevention Services Division						
Administration	$253,606	$1,408,521	$19,416	$1,630,110	32.1	$3,311,653
Opiate Antagonist Bulk Purchase	396,070	225,000	-	-	1.8	621,070
Total	**$649,676**	**$1,633,521**	**$19,416**	**$1,630,110**	**33.9**	**$3,932,723**

REVISED RECOMMENDATION						
LINE ITEM	GF	CF	RF	FF	FTE	TOTAL
(9) Prevention Services Division						
Administration	$496,628	$683,521	$19,416	$1,630,110	31.9	$2,829,675
Opiate Antagonist Bulk Purchase	153,048	950,000	-	-	2.0	1,103,048
Total	**$649,676**	**$1,633,521**	**$19,416**	**$1,630,110**	**33.9**	**$3,932,723**

MEMORANDUM

JOINT BUDGET COMMITTEE

TO	Joint Budget Committee
FROM	Scott Thompson, JBC Staff (303-866-4957)
DATE	March 12, 2020
SUBJECT	Department of Agriculture JBC Staff Comebacks

➔ ROLL-FORWARD AUTHORITY VIA LONG BILL FOOTNOTE FOR AGRICULTURE WORKFORCE DEVELOPMENT PROGRAM

REQUEST: The Department informally requested JBC staff to consider recommending including a footnote to authorize roll-forward authority for the Agriculture Workforce Development Program, which will allow the program to contract with interns for the growing season, as opposed to two contracts that bridges the beginning of the fiscal year. The Program, established through S.B.18-042, provides incentives to agricultural businesses to hire interns. Qualified businesses may be reimbursed up to 50 percent of the actual cost of hiring an intern, not to exceed $5,000 per internship. Currently, because the funding is appropriated by fiscal year internships are required to end June 30 or begin July 1 which is in the middle of the growing season. Feedback from producers and businesses that participated in the first year of the program indicated this as a significant challenge for engaging in the program.

RECOMMENDATION: The current appropriation for the Agriculture Workforce Development Program is $64,108. JBC staff recommends the Committee approve the following footnote:

> Department of Agriculture, Agricultural Markets Division, Agricultural Markets, Agriculture Workforce Development Program -- This appropriation remains available for expenditure until the close of the 2020-21 state fiscal year.

➔ R8 UNUSED SPENDING AUTHORITY

Note: This item was previously presented to the Committee. Staff boxed new information to highlight the additional information requested by the Committee.

REQUEST: The Department requests a reduction of $382,528 total funds comprised of $322,528 cash funds and $60,000 reappropriated funds in FY 2020-21, and a reduction of $252,528 total funds comprised of $192,528 cash funds and $60,000 reappropriated funds in FY 2021-22 and ongoing. The funding would create reductions in the Department's budget in appropriations that historically have been, or are anticipated to be, unused in FY 2020-21.

RECOMMENDATION: **Staff recommends approving the Department request.**

ANALYSIS: The Department is requesting underspent or unused spending authority to be removed from the Long Bill in FY 2020-21 and ongoing. Each reduction is described below.

COLORADO PROUD

An ongoing reduction of $19,363 from various sources of cash funds for the Colorado Proud and publication funds. After financial analysis, the Department estimates that $19,363 could be removed from the appropriation while leaving enough funding in the appropriation to meet the needs of the program. This funding is associated with printing and selling certified organic labels to organic licensees and is not related to marketing the Colorado Proud program.

The Department requested a reduction to the Colorado Proud and publications budget that reflects a reduction to unused spending authority. The Department receives revenue for the program from label sales. Those revenue funds are then used to reorder labels and marketing materials, but are not used for promotional programs (i.e. public relations or advertising) for which the Department received funding in the 2019 session. The label sales do not generate enough revenue annually to be able to spend the full appropriation. The Department has seen a recent shift in how producers identify their products as Colorado Proud. Rather than purchasing labels from the Department, many producers are including a Colorado Proud distinction when printing their own labels. As such, the Department has seen a decrease in revenue from label sales, while the number of Colorado Proud producers has increased. As a result, the Department requested to reduce its associated appropriation to better align its budget with planned spending. This adjustment does not impact Colorado Proud operations.

ECONOMIC DEVELOPMENT FUNDING

An ongoing $45,000 reduction in reappropriated funds to economic development funding that would eliminate the unused appropriation.

AGRICULTURAL STATISTICS SERVICE

An ongoing reduction of $15,000 from surveys and services provided by the USDA National Agricultural Statistics Service that would eliminate the unused appropriation for agriculture statistics, as the program has not generated revenue since 2014. This reduction would not eliminate the program as the Department continues to collaborate with the USDA and issue surveys and statistics at no cost to the industry.

AGRICULTURE LEADERSHIP PROGRAM

A one-time reduction of $280,000 from the Agriculture Management Fund for the Agriculture Leadership Program with an ongoing reduction of $150,000 to better align the Department's appropriation to its historical grant awards. In FY 2017-18 and FY 2018-19, expenditures from this line to Agricultural Leadership Program have been $20,000 while the Adult Agricultural Leadership line item is appropriated $300,000 annually. The Department believes the impact of this reduction would not be significant while it reevaluates how to most effectively leverage these funds.

This program supports the Colorado Agricultural Leadership Program (CALP), through sponsorship and grants, to develop and enhance the leadership capabilities of diverse men and women committed to the future of Colorado's agricultural and rural communities. The Department issued grants to CALP in the amount of $20,000 annually for Fiscal Years 2017-18 and 2018-19 and does not anticipate granting the full amount of funding in the future. As such, the Department could reduce the spending authority without having a significant impact on the Department's program while it determines how best to spend funding moving forward.

The Commissioner of the Department of Agriculture typically sits on the board for the CALP and has determined historically that $20,000 is the appropriate amount for the Department to transfer to the program since the Department's office consolidation and laboratory construction, which were paid from the same cash fund. Given that those projects are completed, or are near completion, the Department is evaluating whether or not, and how, to expand the program under existing appropriations and authority. The Department's R8 budget request would reduce the appropriation to the program one-time in FY 2020-21 while the Department evaluates the program. It would then restore the appropriation to $150,000 for FY 2021-22 and ongoing which the Department believes would be sufficient to support an agriculture leadership grant program.

COMMISSIONER'S OFFICE PERSONAL SERVICES
An ongoing reduction of $8,165 from various sources of cash funds for the personal services budget in the Commissioner's Office that would remove unused and unplanned spending authority.

PESTICIDE TESTING REAPPROPRIATION
An ongoing $15,000 reduction to unused reappropriated funds from CDPHE for marijuana pesticide testing. Neither the Department nor CDPHE anticipate the need for additional marijuana testing at this point which enables the reduction to spending authority.

The marijuana testing funds were available reappropriated funds from CDPHE and were available as the CDA laboratory assisted in the pesticide homogeneity testing on marijuana which created a baseline set of tests for future testing done at other labs. That process only needed to occur one-time and is complete; therefore, the appropriation is no longer necessary.

The Department reports that adopting of this budget request would not significantly impact any of the Department's programs. JBC staff agrees with this assessment. **JBC staff recommends approving the Department request.**

➔ INDUSTRIAL HEMP REGISTRATION PROGRAM CASH FUND WAIVER REQUEST

REQUEST: The Department requests a three-year waiver from the statutory reserve limit for cash funds for the Industrial Hemp Registration Program Cash Fund.

RECOMMENDATION: Staff recommends the Committee approve the Department request. Between the already approved appropriations included in the Department's 2020 supplemental bill and anticipated expenditures necessary to comply with regulation from the USDA, JBC staff believes a waiver is appropriate for a program such as hemp, which is just getting started but requires significant oversight to comply with proposed federal regulations.

DISCUSSION: Since FY 2016-17, registration fees collected for the Industrial Hemp program have grown 410 percent, which was largely driven by inclusion of hemp as a federally recognize agricultural crop in the 2018 Farm Bill. The large growth in revenue from hemp registrations currently exceeds the Department's spending authority, restricting its ability to bring the fund into compliance. During the 2019 legislative session, SB 19-220 "Hemp Regulation Alignment with 2018 Federal Farm Bill" passed, which provided an additional 4.6 FTE to the program. However this additional spending will not fully bring the fund into compliance with the maximum reserve requirements.

The Department expects the Colorado Hemp Advancement and Management Plan (CHAMP) to drive additional funding requests to advance the Industrial Hemp program and bring the program into compliance with federal regulations. The uncertainty surrounding state and federal regulations of the hemp industry, and the appropriate response to those regulations, necessitates further outreach and analysis being conducted as part of the CHAMP process.

The Department has also submitted two supplemental and budget amendment requests for FY 2019-20 and FY 2020-21, which were funded by the Joint Budget Committee, drawing on this fund to comply with new federal regulations. However, given the current balance and current requests in the Governor's Budget, the Department anticipates the fund balance will exceed the maximum reserves in FY 2018-19, FY 2019-20, and FY 2020-21. Any future budget requests may include funding for FTE, contractors, or other needs identified by the CHAMP stakeholders. The Department expects the implementation of this program would meet the demand of Industrial Hemp producers and would bring the fund into compliance over time.

MEMORANDUM

JOINT BUDGET COMMITTEE

TO	Joint Budget Committee
FROM	Justin Brakke, JBC Staff (303-866-4958)
DATE	March 10, 2020
SUBJECT	JBC Staff Comebacks-Public Safety Figure Setting FY 2020-21

This memo contains the following items:

1. Tabled decision items
   a. R1 Performance based contracting
   b. Staff-initiated community corrections placements adjustment
2. New decision item
   a. Staff-initiated cash fund waiver recommendation for the Division of Fire Prevention and Control
3. Technical corrections

TABLED DECISION ITEMS

➔ R1 PERFORMANCE BASED CONTRACTING

REASON FOR COMEBACK

The Committee tabled this decision item pending more information on the total cost of personnel for the implementation of performance based contracting (PBC) in the Division of Criminal Justice.

NEW INFORMATION

The revised analysis for this decision item finds that personnel for the implementation of PBC will cost the State at least $2.5 million General Fund between FY 2018-19 and FY 2022-23. This number is almost certainly an underestimate. The table below includes costs for the current request, but does not include increases to salaries and benefits. All figures are General Fund appropriations.

APPROXIMATE COST OF PBC PERSONNEL						
PBC PERSONNEL	FY 18-19	FY 19-20	FY 20-21	FY 21-22	FY 22-23	TOTAL
PACE Evaluations (4.0 FTE)	$350,180	$365,320	$365,320	$365,320	$365,320	$1,811,460
PBC Contractor	-	75,000	-	-	-	75,000
R1 Performance based contracting (2.0 FTE)	-	-	182,133	221,635	221,635	625,403
Total	**$ 350,180**	**$ 440,320**	**$ 547,453**	**$ 586,955**	**$ 586,955**	**$ 2,511,863**

The Department requires 6.0 FTE in future years; the 4.0 FTE related to PACE evaluations and the 2.0 FTE in the current request. The Department expects the PBC contractor to complete their work by the end of FY 2019-20, so JBC staff has reduced the recommended appropriation for the DCJ Administrative Services line item for FY 2020-21 by $75,000 General Fund. **No additional FTE will be required in future years for the implementation of performance-based contracting.**

The revised analysis also provides additional information about PBC, including its purpose, how provider performance might be evaluated, and background on staffing additions related its implementation.

REVISED RECOMMENDATION AND ANALYSIS FOR R1 PERFORMANCE BASED CONTRACTING

REQUEST: The request includes $231,041 General Fund and 2.0 FTE in FY 2020-21 for the Division of Criminal Justice's Administrative Services. The request annualizes to $221,635 in FY 2021-22.

RECOMMENDATION: **Staff recommends $182,130 General Fund and 2.0 FTE**. Staff agrees with the Department's assertion that the requested FTE are necessary for the implementation of PBC. Per JBC policy, the recommendation does not include centrally-appropriated costs for the first year. Salary costs are calculated at 11/12ths of annual salary.

ANALYSIS

Purpose of Performance Based Contracting

Performance based contracting (PBC) aims to increase the quality of community corrections by tying at least a portion of a contractor's payment to the achievement of specific and measureable performance standards. According the Department's request, PBC will improve quality by reducing recidivism rates and addressing criminogenic behavior. This objective is consistent with the purposes of community corrections in Section 17-27-101.5, C.R.S. One of these purposes is to "Further all purposes of sentencing and improve public safety by reducing the incidence of future crime through design and implementation of research-based policies, practices, programs, and standards." JBC staff interprets "reducing the incidence of future crime" as consistent with PBC's goal of reducing recidivism.

Provider Evaluations

Providers will likely be evaluated on their performance in three general categories:

- **Adherence to evidence based principles of effective intervention**: The Department implemented the Program Assessment for Correction Excellence (PACE) tool to evaluate providers for their adherence to evidence based principles of effective intervention.[1] The PACE tool uses process as a proxy for outcomes; it measures adherence to research-backed processes that are thought to improve outcomes in community corrections. These measures are within the provider's direct control.

- **Compliance with core security audits and public safety standards**: Core security measures are practices that ensure safety in community corrections facilities. Examples include contraband control within the facility and appropriate staffing levels. These measures are also within the provider's direct control.

[1] For a deeper explanation of the PACE tool, see pages 59-60 of the JBC staff figure setting document from 2018: http://leg.colorado.gov/sites/default/files/fy2018-19_pubsaffig2.pdf

- **Risk-informed outcomes**: The Department, with the help of the Washington, D.C.-based Urban Institute, has not made a final determination on risk-informed outcomes.[2] Risk-informed outcomes tentatively include the following measures:
  - **Recidivism**: Facility recidivism rate/average Level of Service Inventory (LSI) score of offenders in facility
  - **Program completion**: Facility successful completion rate (x) average LSI score
  - **New crime rate**: Facility new crime rate/average LSI score
  - **Escape rate:** Facility escape rate/average LSI score

JBC staff documents from 2018 suggest that provider evaluations may be weighted as follows: 50.0 percent PACE score; 33.0 percent risk-informed outcomes; and 17.0 percent core security measures. These percentages represent a working model from two years ago and are not final.

PBC Personnel Background

The Committee appropriated funding for PBC personnel in prior years because DCJ lacked the capacity and expertise to implement the policy. In FY 2018-19, the Committee approved a staff-recommended increase of $350,180 General Fund and 3.6 FTE to evaluate community corrections providers via the PACE tool. This annualized to 4.0 FTE and $365,320 in FY 2019-20. The Department says these FTE are permanent because they are necessary for the implementation and ongoing administration of PBC. PACE evaluations are scheduled for completion by the end of FY 2019-20, but these FTE will reevaluate providers on a designated cycle. They will also provide ongoing technical assistance and support to providers.

In FY 2019-20, the Committee approved a staff-recommended increase of $75,000 General Fund for the DCJ to contract with a third-party to analyze baseline measurements for a tiered system of funding for PBC. The Department expects this work to be finished by the end of FY 2019-20, so the recommended appropriation for the DCJ Administrative Services line item has been reduced by $75,000 General Fund for FY 2020-21.

The Department says the 2.0 FTE in the current request will be permanent positions because the PBC performance cycle will require regular outcome measurement. The requested FTE will track and measure risk-informed outcomes, develop provider assessments and contracts, and gather evidence on best practices. For example, one of the requested FTE will determine performance tiers for providers and design contracts accordingly. The other FTE will, among other things, validate the predictive relationship between PACE scores and risk-informed outcomes.

Legislation

The Department approached staff about the possibility of a declaration of legislative intent to support PBC. Legislation is not necessary for DCJ to implement PBC, so staff is not recommending legislation at this time.

Staff Conclusion

Staff agrees with the Department's assertion that the requested FTE are necessary for the implementation of performance-based contracting. The Committee appropriated funds for personnel

[2] Link to Urban Institute: https://www.urban.org/

in prior years because the Department lacked the personnel necessary to implement PBC. Staff recommends approval of the current request for the same reason.

LINE ITEM DETAIL

(A) ADMINISTRATION

DCJ ADMINISTRATIVE SERVICES

REQUEST: The Department requests an appropriation of $6,270,950 total funds, including of $3,921,502 General Fund, and 47.7 FTE. The request includes increased funding and FTE for R1 Performance Based Contracting, and decreased funding for R14 Reduce Administrative Services Spending Authority and R20 Adjust Funds for Civil Asset Forfeiture Reforms Grant.

RECOMMENDATION: **Staff recommends $6,191,764 total funds for FY 2020-21.**

DIVISION OF CRIMINAL JUSTICE, ADMINISTRATION, DCJ ADMINISTRATIVE SERVICES						
	TOTAL FUNDS	GENERAL FUND	CASH FUNDS	REAPPROPRIATED FUNDS	FEDERAL FUNDS	FTE
FY 2019-20 APPROPRIATION						
SB 19-207 (Long Bill)	$6,429,581	$3,600,841	$2,221,108	$473,495	$134,137	45.2
Other legislation	$66,407	$66,407	$0	$0	$0	0.3
TOTAL	**$6,495,988**	**$3,667,248**	**$2,221,108**	**$473,495**	**$134,137**	**45.5**
FY 2020-21 RECOMMENDED APPROPRIATION						
FY 2019-20 Appropriation	$6,495,988	$3,667,248	$2,221,108	$473,495	$134,137	45.5
R1 Performance-based contracting	182,130	182,130	0	0	0	2.0
Annualize prior year budget actions	54,852	12,588	26,821	15,443	0	0.0
SB 18-200 PERA	22,298	14,850	3,538	3,910	0	0.0
R20 Adjust funds for civil assets forfeiture reforms grant	(495,703)	0	(495,703)	0	0	0.0
Annualize prior year legislation	(34,500)	(34,500)	0	0	0	0.2
R14 Reduce administrative services spending authority	(33,301)	0	(33,301)	0	0	0.0
TOTAL	**$6,191,764**	**$3,842,316**	**$1,722,463**	**$492,848**	**$134,137**	**47.7**
INCREASE/(DECREASE)	**($304,224)**	**$175,068**	**($498,645)**	**$19,353**	**$0**	**2.2**
Percentage Change	(4.7%)	4.8%	(22.5%)	4.1%	0.0%	4.8%
FY 2020-21 EXECUTIVE REQUEST	**$6,270,950**	**$3,921,502**	**$1,722,463**	**$492,848**	**$134,137**	**47.7**
Request Above/(Below) Recommendation	$79,186	$79,186	$0	$0	$0	0.0

➔ STAFF-INITIATED — COMMUNITY CORRECTIONS PLACEMENTS ADJUSTMENT

REASON FOR COMEBACK

The Committee tabled this decision item for two reasons: (1) Staff miscommunicated the size of the recommended increase, and (2) Staff was asked to investigate whether a general per-diem rate increase for community corrections providers would be appropriate for FY 2020-21.

NEW INFORMATION

The substance of the recommendation has not changed, but the explanation has been revised. Staff is not recommending a general rate increase at this time. The revised analysis includes additional information about rates, the Department's support of a rate freeze, and staff's decision to not recommend a rate increase.

REVISED RECOMMENDATION AND ANALYSIS

REQUEST: The Department did not request this funding increase. The Department requested $68,791,215 General Fund for FY 2020-21. The request did not include funding for the Department's supplemental caseload adjustment for FY 2019-20.

RECOMMENDATION:

A) **Staff recommends an increase of $7,758,204 General Fund and a corresponding footnote for community corrections placements.** This appropriation accounts for the future fiscal year impact of the $3.9 million supplemental caseload adjustment requested by the Department and the additional $1.1 million supplemental appropriation provided by the Committee for FY 2019-20. With this recommendation, total appropriations for the Community Corrections Placements line item would be $76,549,419 General Fund for FY 2020-21. This is an increase of $2,758,204 from the Department's FY 2019-20 supplemental budget.

B) **Staff recommends a $5.19 increase to the Inpatient Therapeutic Community provider per-diem rate, which will be reflected in the footnote.** The cost of the increase is $205,231 General Fund. Staff recommends that this amount be absorbed within the recommended increase for Recommendation A.

ANALYSIS (REVISED)

The Department's FY 2019-20 supplemental request did not include continuation figures for FY 2020-21 and future years, nor did the Department submit a budget amendment for FY 2020-21 to account for FY 2019-20 supplemental appropriations. The following table shows the Department's calculations for its FY 2019-20 supplemental request and staff's calculations for the potential impact of additional appropriations provided by the Committee.

COMMUNITY CORRECTIONS PLACEMENTS SUPPLEMENTAL FY 2019-20				
PLACEMENT TYPE	SUPPLEMENTAL BEDS	RATE	NUMBER OF DAYS	TOTAL
DCJ Request				
Standard Residential	129	$48.45	366	$2,287,518
Standard Residential for El Paso Expansion	125	48.45	151	914,494

COMMUNITY CORRECTIONS PLACEMENTS SUPPLEMENTAL FY 2019-20				
PLACEMENT TYPE	SUPPLEMENTAL BEDS	RATE	NUMBER OF DAYS	TOTAL
Intensive Residential Treatment	12	93.47	274	307,329
Standard non-residential	76.5	6.56	366	183,673
FY 2018-19 Overspending Restriction	12	48.45	366	209,191
Subtotal				**$3,902,206**
JBC-added funding*				
Standard residential	150	$48.45	151	$1,097,794
Cognitive behavioral treatment pilot program	77	95.02	151	-
Intensive Residential Treatment	78	93.47	151	-
Inpatient Therapeutic Community	96	75.76	151	-
Residential Dual Diagnosis Treatment	88	82.64	151	-
Sex Offender	88	82.64	151	-
Supplemental Change				**$5,000,000**
Total Appropriation				**$73,791,215**

*Possible beds at current per-diem rates given a $1,097,794 appropriation.

The purpose of JBC-approved additional funding was to expand capacity in the system. Staff added 150 standard residential beds (the least costly residential beds) to the number of standard beds (129) in the Department's supplemental request as the basis for the FY 2020-21 adjustment. Staff also extrapolated the Department's request to reflect a full year of funding. These calculations are shown in the following table.

COMMUNITY CORRECTIONS PLACEMENTS ADJUSTMENT FY 2020-21				
PLACEMENT TYPE	BEDS	RATE	NUMBER OF DAYS	TOTAL
Standard Residential	279	$48.45	366	$4,947,423
Standard Residential for El Paso Expansion	125	48.45	366	2,216,588
Intensive Residential Treatment	12	93.47	366	410,520
Non-residential	76.5	6.56	366	183,673
FY 2020-21 adjustment				**$7,758,204**
Department request FY 2020-21				$68,791,215
Staff recommended increase				7,758,204
FY 2020-21 Total Appropriation				**$76,549,419**

Staff used 366 days to be consistent with last year's calculations, which included an extra day for the leap year. The difference between a 366 day calculation and a 365 day calculation is $21,197. This amount would fund approximately 1.2 standard residential beds for a full year.

If H.B. 20-1262 (Housing Assistance Justice System Transition Money) is signed by the Governor, any unexpended appropriations for the community corrections placements line item will revert back to the General Fund, rather than to the Department of Local Affairs for housing assistance.

ⓘ FOOTNOTE AND INPATIENT THERAPEUTIC COMMUNITY RATE ADJUSTMENT

Staff also recommends that the following table be included in the footnote that attaches to the *Community Corrections Placements* appropriation (this footnote is also contained in the *Long Bill Footnote* section below). The footnote reflects the total appropriation, including the recommended adjustment to the Inpatient Therapeutic Community (ITC) per-diem rate. The other provider rates are consistent

with the rates established in the FY 2019-20 Long Bill because the Committee approved an FY 2019-20 JBC staff recommendation to freeze provider rates until performance base contracting is implemented.[3] The Department did not request a provider rate increase for FY 2020-21, and JBC staff did not apply the 1.9 percent common policy rate adjustment to community corrections providers. Staff is *not* recommending application of the common policy rate increase at this time.

Placement Type	Total	Diversion	Transition	Parole	Appropriation
Standard residential	48.45	1,717	1,215	139	54,458,048
Cognitive behavioral treatment pilot program	95.02	24	24	0	1,669,311
Intensive Residential Treatment	93.47	161	28	35	7,663,314
Inpatient Therapeutic Community	80.95	68	37	3	3,199,792
Residential Dual Diagnosis Treatment	82.64	82	25	13	3,629,583
Sex Offender	82.64	75	28	13	3,508,597
Standard Non-residential	6.56	774	6	6	1,887,112
Outpatient Therapeutic Community	23.52	39	23	0	533,662
Total		**2,940**	**1,386**	**209**	**76,549,419**

FY 2019-20 RATE INCREASE AND FREEZE

In figure setting for FY 2019-20, JBC staff recommended a halt to provider rate increases until performance-based rates go into effect July 1, 2022. The Division of Criminal Justice supported, and still supports, this recommendation. To account for the future impact of this rate freeze, JBC staff recommended and the Committee approved a significant rate increase for all providers. The 5.5 percent average increase (shown in five-year context below) cost a total of $6,772,909 General Fund.

COMMUNITY CORRECTIONS PROVIDER RATES							
PLACEMENT TYPE*	FY 16	FY 17	FY 18	FY 19	FY 20	CHANGE (%) FY 16 TO FY 20	CHANGE (%) FY 19 TO FY 20
Standard residential	42.09	42.09	42.68	43.11	48.45	15.1%	12.4%
Intensive Residential Treatment	88.80	88.80	90.04	90.94	93.47	5.3%	2.8%
Inpatient Therapeutic Community	69.82	69.82	70.80	71.51	75.76	8.5%	5.9%
Residential Dual Diagnosis Treatment	77.38	77.38	78.46	79.25	82.64	6.8%	4.3%
Sex Offender	77.38	77.38	78.46	79.25	82.64	6.8%	4.3%
Standard Non-residential	6.13	6.13	6.22	6.28	6.56	7.0%	4.5%
Outpatient Therapeutic Community	22.00	22.00	22.31	22.53	23.52	6.9%	4.4%
						Average = 8.1%	**Average=5.5%**

*Does not include Cognitive Behavioral Treatment Pilot Program

However, staff analysis for last year's figure setting document suggests that rates may not be close to covering provider costs, even when accounting for last year's increase. That analysis sought to capture provider costs by:

1. Sending a survey to providers to determine costs (these costs were self-reported);
2. Performing a statistical analysis of the reported numbers. Only costs that were within 95.0 percent of the norm were retained;
3. Comparing reported costs (including Fringe, General and Administrative Costs, and Facility Costs) to industry standards to determine variances;

[3] The exact wording of the recommendation: "Staff also recommends that this line item no longer receive a provider rate increase…" See full document at: https://leg.colorado.gov/sites/default/files/fy2019-20_pubsaffig2.pdf

4 Comparing responses to several questions in the survey that were meant as checks on costs to ensure that reporting in individual areas matched program cost reporting; and
5 Adjusting the costs based on the results from the steps described above.

By using applying the results of that cost analysis to current rates, staff finds that current rates are, on average, 20.8 percent below reported costs.

Furthermore, provider rates have not kept pace with inflation since FY 2015-16, even when accounting for last year's large rate increase. The lone exception is the rate for standard residential providers. If the freeze holds through the end of FY 2021-22, providers will experience an average real rate decrease of 6.5 percent since FY 2015-16.

COMMUNITY CORRECTIONS PROVIDER RATES (INFLATION-ADJUSTED, CONSTANT FY 19-20 DOLLARS*)

PLACEMENT TYPE**	FY 16	FY 17	FY 18	FY 19	FY 20	FY 21	FY 22	CHANGE (%) FY 19 TO FY 20	CHANGE (%) FY 19 TO FY 21	CHANGE (%) FY 16 TO 20	CHANGE (%) FY 16 TO 22
Standard	46.58	45.30	44.41	44.07	48.45	47.41	46.39	9.9%	7.6%	4.0%	-0.4%
IRT	98.27	95.57	93.69	92.97	93.47	91.46	89.49	0.5%	-1.6%	-4.9%	-8.9%
ITC	77.26	75.14	73.67	73.10	75.76	74.13	72.53	3.6%	1.4%	-1.9%	-6.1%
RDDT	85.63	83.28	81.64	81.02	82.64	80.86	79.12	2.0%	-0.2%	-3.5%	-7.6%
SO	85.63	83.28	81.64	81.02	82.64	80.86	79.12	2.0%	-0.2%	-3.5%	-7.6%
Non-res.	6.78	6.60	6.47	6.42	6.56	6.42	6.28	2.2%	0.0%	-3.3%	-7.4%
OTC	24.35	23.68	23.21	23.03	23.52	23.01	22.52	2.1%	-0.1%	-3.4%	-7.5%
							Average	**3.2%**	**1.0%**	**-2.4%**	**-6.5%**

* Inflation-adjustment calculated using the U.S. Bureau of Labor Statistics' Consumer Price Index (CPI) for the Denver-Aurora-Lakewood metro area (Series ID CUURS48BSA0). Calculations assume CPI growth of 2.2% in FY 21 and subsequent years.
**Does not include Cognitive Behavioral Treatment Pilot Program.

Department Support of the Rate Freeze

The Department supports the rate freeze for at least two reasons. First, it believes the freeze creates an incentive for providers to increase the quality and outcomes of their programming to be eligible for performance based contracting (PBC) rates. Second, it believes additional funding will be needed for performance rates in FY 2022-23. Additional funding for both base rate increases and performance rates may not fit into the state's overall budget and goals for the upcoming years.

Staff concurs with the second point, but not the first. Increasing base rates would increase the base appropriation in future years if the number of funded beds stays constant or increases. Appropriations for performance rates have not been determined, but would likely be in the millions of dollars. The mechanism for delivering those funds through the Long Bill has not been determined either. Past proposals include repurposing the Facility Payments line item, which provides funding for fixed payments that are independent of the number of residents in a facility. That line item totaled about $4.2 million General Fund in staff's recommendation for FY 2020-21.

Regarding incentives, it is hard to imagine how providers will be incentivized by financial rewards that do not exist yet. These rewards are central to PBC. A Department hearing response in January 2018 says a foundational premise of PBC is that "providers will be incentivized by money to improve their performance over time." If the financial reward does not exist yet—if all that exists is the idea of the reward—the financial incentive does not exist. There is just the promise of an incentive. Furthermore, that premise ignores other possible incentives for improving outcomes, such as ideological or value-

driven incentives. A related assumption is that providers are not working to improve outcomes because their compensation is not linked to outcomes. These assumptions may have merit, but staff has not seen evidence to support them.

Maintaining the Rate Freeze in FY 2020-21

Staff is not recommending a rate increase at this time for two reasons. First, staff cannot make an affirmative case for a rate increase. Second, when accounting for inflation from FY 2018-19 through FY 2020-21, provider rates will be, on average, 1.0 percent higher than they were in FY 2018-19.

Should Rates Change?

Even if one acknowledges the existence of a gap between rates and costs, and that rates have not kept pace with inflation, one is still left with the question "Should rates change?" Statute offers no criteria for determining rates in community corrections. There is no statute that says rates should match costs, nor is there a statute that says rates need to match inflation. The only available guidance is the purposes of community corrections in Section 17-27-101.5, C.R.S. Those purposes are:

- Further all purposes of sentencing and improve public safety by reducing the incidence of future crime through design and implementation of research-based policies, practices, programs, and standards;
- Prepare, select, and assist people who, after serving a statutorily defined period of incarceration, will be transitioned and returned to the community through supported partnerships with local community corrections boards;
- Set individualized conditions of community corrections supervision and provide services and support to assist people in community corrections in addressing identified risks and needs; and
- Achieve a successful discharge from community corrections supervision through reduction of risks and needs and satisfactory compliance with conditions of placement.

It is not clear that these purposes are negatively affected if rates remain unchanged for FY 2019-20, or that they will be positively affected if rates increase. In other words, if rates stay constant, staff is not aware of any evidence that suggests that the public will be less safe; that recidivism will increase; that people in community corrections will not have their risks and needs identified; or that the probability of a successful discharge will decrease.

Sufficiency of Last Year's Rate Increase

Last year's rate increase covers inflation through FY 2020-21 for most providers. The table below shows that, on average, provider rates will be 1.0 percent higher than they were in FY 2018-19. In cases where the real rate does decrease, the average is negative 0.5 percent.

COMMUNITY CORRECTIONS PROVIDER RATES (INFLATION-ADJUSTED, CONSTANT FY 19-20 DOLLARS)

PLACEMENT TYPE	FY 19	FY 20	FY 21	CHANGE (%) FY 19 TO FY 20	CHANGE (%) FY 19 TO FY 21
Standard Res.	44.07	48.45	47.41	9.9%	7.6%

COMMUNITY CORRECTIONS PROVIDER RATES (INFLATION-ADJUSTED, CONSTANT FY 19-20 DOLLARS)					
PLACEMENT TYPE	FY 19	FY 20	FY 21	CHANGE (%) FY 19 TO FY 20	CHANGE (%) FY 19 TO FY 21
IRT	92.97	93.47	91.46	0.5%	-1.6%
ITC	73.1	75.76	74.13	3.6%	1.4%
RDDT	81.02	82.64	80.86	2.0%	-0.2%
SO	81.02	82.64	80.86	2.0%	-0.2%
Standard Non-res.	6.42	6.56	6.42	2.2%	0.0%
OTC	23.03	23.52	23.01	2.1%	-0.1%
Average				**3.2%**	**1.0%**

* Inflation-adjustment calculated using the U.S. Bureau of Labor Statistics' Consumer Price Index (CPI) for the Denver-Aurora-Lakewood metro area (Series ID CUURS48BSA0). Calculations assume CPI growth of 2.2% in FY 21 and subsequent years.
**Does not include Cognitive Behavioral Treatment Pilot Program.

However, if the Committee wants to increase rates for all providers, it could use the following figures as a guide. These figures assume that number of funded beds in the system will remain constant in FY 2020-21.

- **Cost Matching**: If provider rates matched reported provider costs, the State would have to increase appropriations by about $46.3 million General Fund.

- **Common Policy**: If rates were increased by 1.9 percent (the common policy for FY 2020-21), the State would have to increase appropriations by about $1.24 million General Fund.

- **One Percent**: If rates were increased by 1.0 percent, the State would have to increase appropriations by about $556,000 General Fund.

Inpatient Therapeutic Community (ITC) Rate Increase
In an exception to the preceding analysis, staff is recommending an increase of $5.19 ($75.76 to $80.95, 6.9 percent) in the ITC rate for FY 2020-21. The cost of the increase is $205,231 General Fund. This recommendation should be viewed precautionary step taken to avoid the potential loss of about 108 funded beds in a program that achieves higher-than-average results among high-risk offenders. Staff believes this recommendation meets statutory guidelines because the program "improve[s] public safety by reducing the incidence of future crime…" (Section 17-27-101.5 (1)(a), C.R.S.)

The loss of these beds could occur because:

- The State's only ITC provider, Addiction Research and Treatment Services (ARTS), has been running a fiscal deficit in its largest program for four consecutive fiscal years and is projected run another deficit in FY 2019-20.

- As a self-funded auxiliary of Department of Psychiatry at the University of Colorado School of Medicine, ARTS has reportedly covered the deficit by using a line-of-credit offered by the University, but cannot sustain the line-of-credit without a viable plan to erase the deficit. Without this plan, the University will reportedly end the line-of-credit, and with it the provider's ability to cover its costs and continue taking community corrections placements.

Staff confirmed the deficit and analyzed the provider's costs, expenses, and cash flow, but could not confirm the line-of-credit issue. The University confirmed it does not subsidize the provider, but neither confirmed nor denied staff's questions about the existence of a line-of-credit and its imminent withdrawal.

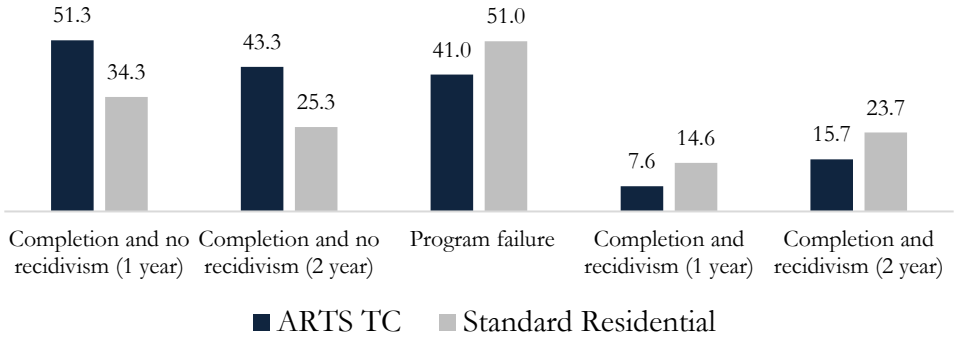
However, staff still believes a rate increase is appropriate for three reasons. First, the provider has higher program completion rates and lower recidivism rates among high-risk offenders than standard residential providers. Second, the provider has attempted to cut expenses in an attempt to stay viable. Third, the provider incurs costs that it cannot control as a University entity.

The intent of the rate increase is to keep the provider from running a deficit in FY 2020-21 and avoid the immediate loss of beds by ending the provider's reported reliance on credit. The total cost of the rate increase is $205,231 General Fund. Staff would use the time purchased by this recommendation to determine if further action is necessary.

ARTS OUTCOMES

The following graph shows ARTS' outcomes relative to standard residential provider outcomes for the same offender risk level based on available data. ARTS has been the only ITC provider in the State since 2015, and the data show that ARTS' programs perform better than standard residential programs. This data was the primary factor in staff's recommendation. If ARTS' outcomes were equal to or lesser than standard residential providers, staff would not be recommending the rate increase.

Program Outcomes: ARTS and Standard Residential
High-Risk Clients, Average (% of total), 2015-17



(Source: DCJ)

ARTS CASH FLOW

Between FY 2014-15 and FY 2018-19, ARTS' largest program–Peer I, which provides 80 residential TC beds for males—experienced a 30.5 percent decline in revenue while reducing expenditures by 23.8 percent. ARTS ran a deficit in every year but FY 2014-15, leading to a total deficit of $445,902 by the end of FY 2018-19. Of the expenditures, an average of 61.8 percent goes to salaries, wages, and benefits; approximately 20.0 percent goes to operating expenses, and the remaining expenses go to travel, utilities, and general recharges, which include payments to the University for indirect costs and administrative expenses.

STAFF CALCULATIONS

Staff arrived at the recommended rate increase by accounting for inflation in the next fiscal year ($65,882) and adding it to the average fiscal deficit for PEER I from 2016 to 2019 ($139,349). Staff calculations are show below. Staff recommends that the $205,231 cost of the increase be absorbed within the total recommended appropriation of $76,549,419 for community corrections placements.

STAFF CALCULATIONS	
Current Rate	$75.76
Beds	108
Days	366
Revenue A (Rate x beds x days)	**$2,994,641**
Inflation adjusted rate (2.2%)	$77.43
Revenue B (Rate x beds x days)	**$3,060,523**
Average Deficit	$139,349
Target revenue (Revenue B + Deficit)	**$3,199,872**
New Rate = Target revenue/(beds x days)	$80.95

NEW DECISION ITEMS

➔ STAFF-INITIATED CASH FUND WAIVER RECOMMENDATION: DFPC CASH FUNDS

REQUEST: The Department did not request waivers for the following cash funds through the annual budget process:

- Health Facility Construction and Inspection Cash Fund (Section 24-33.5-1207.8, C.R.S.)
- Public School Construction and Inspection Cash Fund (Section 24-33.5-1207.7, C.R.S.)

RECOMMENDATION: **Staff recommends a three-year waiver for the Health Facility Construction and Inspection Cash Fund and the Public School Construction and Inspection Cash Fund beginning in FY 2020-21.**

Staff also recommends that the waiver set an alternative maximum reserve at the following percentages:

- Health Facility Construction and Inspection Cash Fund: 30.0 percent
- Public School Construction and Inspection Cash Fund: 40.0 percent

These cash funds are fee-based and subject to TABOR. Increasing the alternative maximum reserve to the recommend percentages would increase TABOR revenue by approximately $920,000 in FY 2020-21. This number is based on the assumption that the Department collects enough revenue to hit the ceiling established by the new maximum reserve.

The new maximum reserve percentages would allow the Department to collect enough revenue to support 100.0 percent the DPFC Personal Services line item (54.6 FTE) for four months, or about 36.0 percent of the line item for a full-year.

ANALYSIS

Purpose of the Waiver

The recommended waiver would allow DFPC to support its Personal Services line item in the event of an economic downturn. These two funds support a large portion of the line item (about 36.0 percent), and both funds are heavily dependent on the construction industry for fee revenue. If there is a recession and no new hospital or school construction projects are undertaken, DFPC would run out of cash fund dollars to support the FTE housed within the Personal Services line item, which would affect the ability of the Division to play its role in making sure that existing multi-year construction projects meet fire code requirements.

Effect of Waiver on TABOR Revenue

The Department originally sought a full exemption for these funds through S.B. 20-141 (Cash Funds Maximum Reserve Exception). Staff believes an alternative maximum reserve set at the recommended percentages will allow DFPC time to adjust to an economic downturn and keeps the TABOR impact relatively low (<$1,000,000). However, the Committee should be aware that future growth in DFPC's Personal Services and Operating Expenses line items—which are supported by these funds—will increase the potential TABOR impact of fee revenue collected for these funds. Staff's calculations for the potential TABOR impact in FY 2020-21 are shown below.

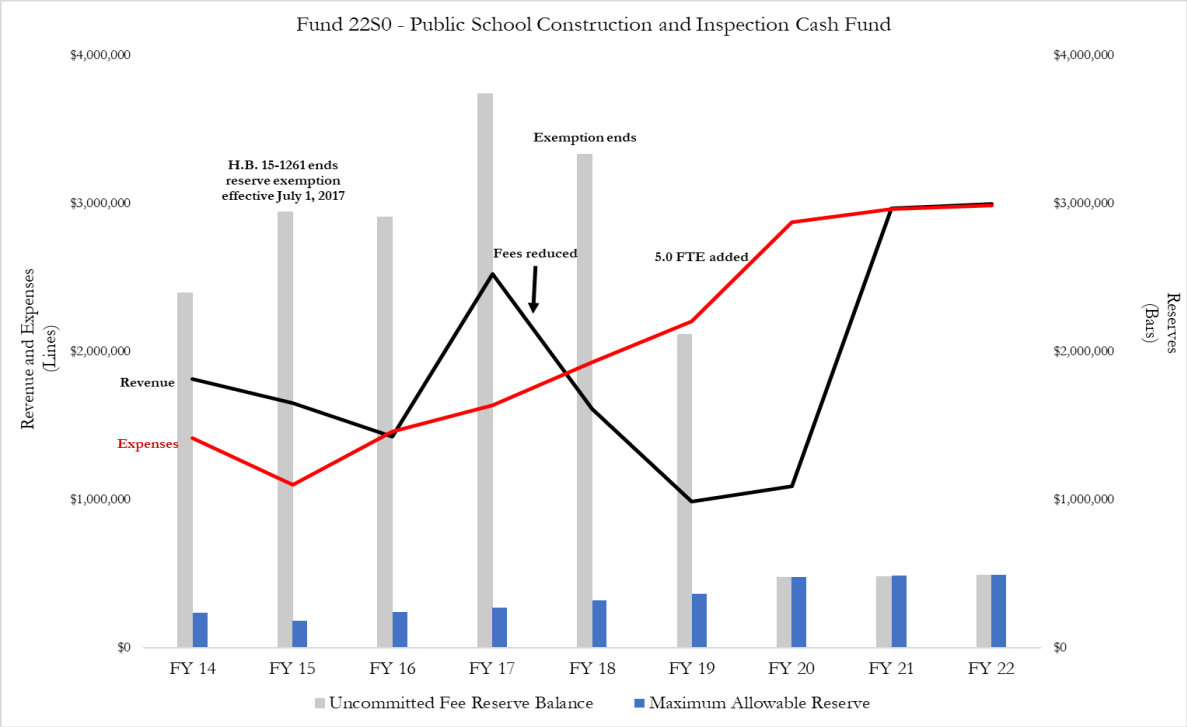
TABOR IMPACT-STAFF CALCULATIONS		
FY 2020-21	HEALTH FACILITY	PUBLIC SCHOOL
Estimated Expenses from Fund	$1,691,000	$2,960,000
Maximum Revenue with Alt. Max Reserve	2,198,300	4,144,000
Maximum Revenue with 16.5% Max Reserve	1,970,015	3,448,400
Difference between Alt. Max and 16.5% Reserve	228,285	695,600
TABOR Impact	**$923,885**	

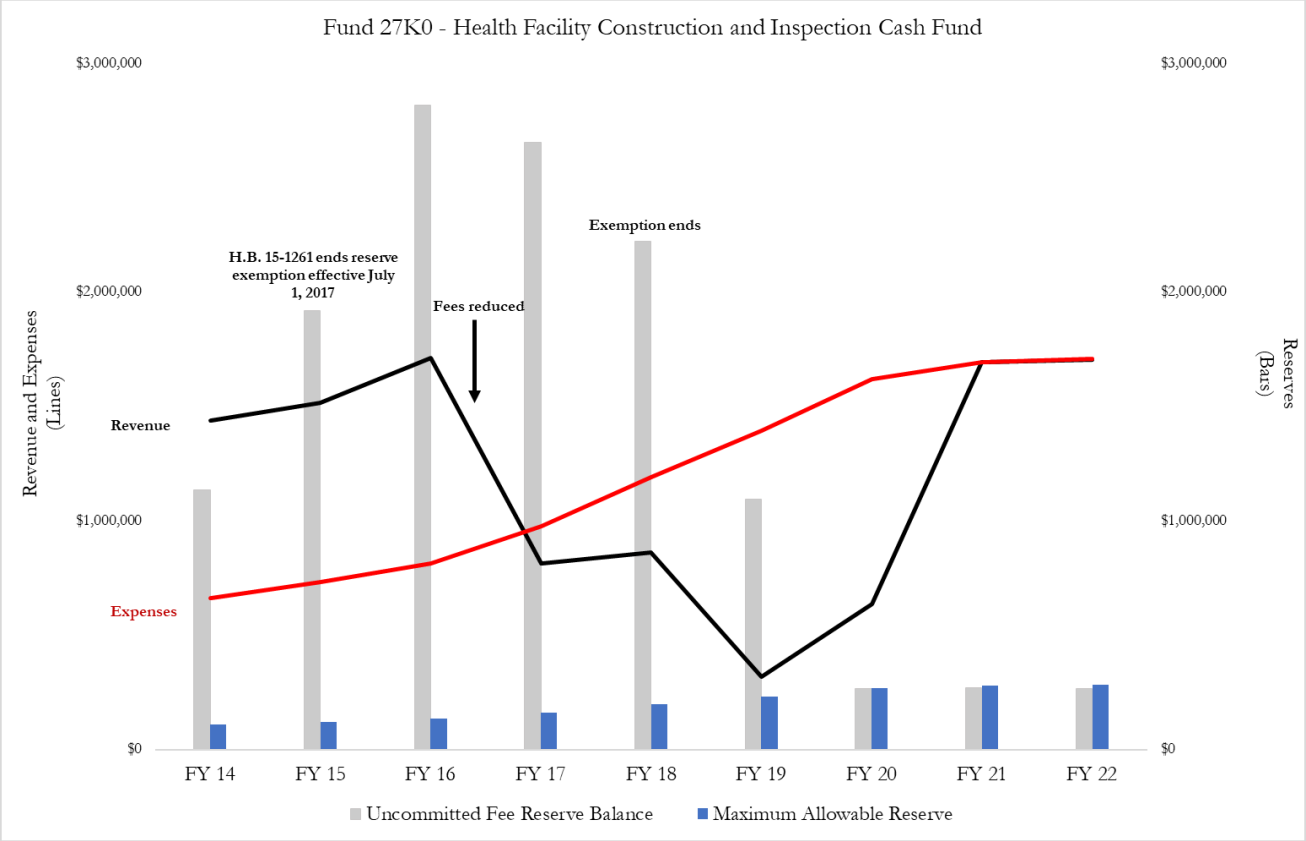
If uncommitted reserves exceed the amount allowed by the alternative maximum reserve, DFPC will have a maximum of three years to get back into compliance. Past practice suggests DFPC will either eliminate or reduce fees to accomplish this task.

Background

Section 24-75-402, C.R.S., establishes a maximum uncommitted reserve balance for cash funds. That reserve requirement is set at 16.5 percent of the amount expended from a cash fund during the fiscal year. The Public School Construction and Inspection Cash Fund and the Health Facility Construction and Inspection Cash Fund were exempt from that requirement until 2017. That exemption ended due to the passage of the JBC-sponsored H.B. 15-1261 (Maximum Reserve For Cash Funds With Fee Revenue).

Prior to the end of the exemption, both funds had uncommitted reserve balances (grey column) that significantly exceeded the 16.5 percent reserve requirement (blue column). To bring the funds back into compliance, DFPC reduced revenues (black line) by suspending or reducing fees, and increased expenditures from the funds (red line). The graphs below show the history of both funds. Amounts shown for FY 2021 and FY 2022 are based on the Department's estimates without the recommended waiver.




Fund 27K0 - Health Facility Construction and Inspection Cash Fund
$3,000,000
$2,000,000
$1,000,000
$0
Revenue and Expenses (Lines)
Reserves (Bars)
H.B. 15-1261 ends reserve exemption effective July 1, 2017
Fees reduced
Exemption ends
Revenue
Expenses
FY 14
FY 15
FY 16
FY 17
FY 18
FY 19
FY 20
FY 21
FY 22
Uncommitted Fee Reserve Balance
Maximum Allowable Reserve

TECHNICAL CORRECTIONS

Line Item Detail Additions: The figure setting document was missing the following two line item descriptions. However, the amounts for each line item were included in the numbers pages (page 119 and page 137, respectively). Both line items were JBC-initiated decisions in prior years.

LINE ITEM DETAIL — DIVISION OF HOMELAND SECURITY AND EMERGENCY MANAGEMENT

(A) OFFICE OF EMERGENCY MANAGEMENT

ACCESS AND FUNCTIONAL NEEDS PLANNING

This line funds the development of a statewide network of local disability service emergency coordinators and further development of emergency preparedness plans for people with disabilities.

STATUTORY AUTHORITY: Section 34-33.5-705 (Office of Emergency Management)

REQUEST: The Department requests continuation funding of $500,000 General Fund.

RECOMMENDATION: **Staff recommends approval of the Department request.**

LINE ITEM DETAIL — DIVISION OF FIRE PREVENTION AND CONTROL

APPROPRIATION TO THE LOCAL FIREFIGHTER SAFETY AND DISEASE PREVENTION FUND

This line item provides the mechanism to award grants to governing bodies to provide reimbursement for equipment and training designed to increase firefighter safety and prevent occupation-related diseases.

STATUTORY AUTHORITY: Section 24-33.5-1231, C.R.S.

REQUEST: The Department requests continuation funding of $500,000 General Fund.

RECOMMENDATION: **Staff recommends approval of the request.**

Technical Corrections

Each of the following line items had errors in the text, but the underlying numbers reflected in the Department's total recommended appropriation were correct.

- Division of Fire Prevention and Control-Wildfire Preparedness Fund: The text in the original JBC staff figure setting document erroneously identified the Department's request as $4,150,000 cash funds. The request was for $4,150,000 General Fund. The Department totals approved by the Committee are unaffected by this error.

- Division of Fire Prevention and Control-Wildland Fire Management: The text in the original JBC staff figure setting document erroneously identified the Department's request as including $12,691,871 General Fund. The request was for $13,570,415 General Fund. The Department totals approved by the Committee are unaffected by this error.

- Division of Homeland Security and Emergency Management-Office of Prevention and Security-Personal Services: The text in the original JBC staff figure setting document erroneously recommended $5,473,434 total funds. Staff is recommending $1,465,497 total funds for this line item. The Department totals approved by the Committee are unaffected by this error.

The following line item was correct in the text, but the underlying numbers reflected in the Department's total were incorrect.

- Executive Director's Office-Parental Leave: Staff recommended $0 in accordance with the Committee's decision on common policies. However, the numbers pages (page 104) show a recommended appropriation of $86,105 total funds. Staff removed this appropriation, which reduces the Committee-approved total for the Department by that amount.