

# JOINT BUDGET COMMITTEE



## INTERIM SUPPLEMENTAL BUDGET REQUESTS FY 2023-24

### DEPARTMENT OF CORRECTIONS

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

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## INTERIM SUPPLEMENTAL REQUESTS

### ES-01 HOUSING AT BUENA VISTA

	REQUEST	RECOMMENDATION
<b>TOTAL</b>	<b>\$120,000</b>	<b>\$0</b>
FTE	0.0	0.0
General Fund	\$120,000	\$0
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.] **NO**

**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.] **NO**

**Explanation:** JBC staff does not agree that this request is necessary due to unforeseen circumstances. Housing challenges were evident prior to and during the last legislative session. During the last session, the Department requested \$2,266,000 General Fund in FY 2023-24 to provide monthly housing stipends of \$1,000 to 1,133 staff working at the Buena Vista, Sterling, and Limon correctional facilities in July and August 2023. The General Assembly appropriated \$9,064,000 General Fund for this purpose in FY 2023-24, which is enough to provide \$1,000 monthly housing stipends to 1,133 staff at those facilities through February 2024. In sum, the Department acknowledged the housing challenge at Buena Vista in January 2023 and the General Assembly appropriated a much larger amount of money than the Department requested to help deal with that challenge.

The letter that accompanied this interim budget request contends that the request is needed because “the window to secure workforce housing will likely close in advance of the upcoming legislative session.” JBC staff asked about this window and why it will likely close before the session starts. Staff received this response: “Housing in the BV market is hard to find and costly. Through conversations with community leaders, DOC understands that vendors will offer workforce housing units very soon. Because the market is so competitive, these units will not stay on the market very long – most likely a few weeks. If the DOC does not have the appropriate authorization to procure the units, it will miss this opportunity to secure workforce housing.” However, the core issue—the quantity and cost of housing in the Buena Vista area—is not an “unforeseen circumstance.”

In short, the circumstances driving the request (housing shortage in Buena Vista and DOC staff living on-site) were known to the Department when the General Assembly made the FY 2023-24 appropriation, so JBC staff does not believe that the request meets the interim supplemental criteria. That said, the Department appears to be arguing that the availability of additional housing assumed in the request is the unforeseen circumstance driving the request.

**DEPARTMENT REQUEST:** The Department requests that the JBC authorize an over-expenditure of \$120,000 General Fund in FY 2023-24. This would increase to \$360,000 in FY 2024-25 and future years (the request indicates that future years will be requested in a separate budget action). Per the request, these funds would allow the Department to “secure housing accommodations for up to 50 staff through one or more housing vendors in the greater Buena Vista area.”

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The official request places this expense in the *Personal Services* line item in the Superintendents Subprogram, which shows \$12,587,485 General Fund in the FY 2023-24 Long Bill.<sup>1</sup> However, the Department says that this is a mistake. In response to JBC staff questions, the Department designated the *Operating Expenses* line item in the Superintendents Subprogram as the correct line item. The FY 2023-24 Long Bill provides \$6,450,537 General Fund for this line item. In sum, rather than an over-expenditure of \$120,000 in a \$12.6 million *Personal Services* line item, it would be an over-expenditure of \$120,000 in a \$6.5 million *Operating Expenses* line item.

**STAFF RECOMMENDATION:** Staff recommends denial of the request because it does not meet supplemental criteria. Even if the request met supplemental criteria, staff would still recommend denial of the request.

## ANALYSIS

### BACKGROUND

#### *DOC EMPLOYEES CURRENTLY HOUSED AT BUENA VISTA CORRECTIONAL COMPLEX (BVCC)*

The request explains that DOC employees working at BVCC have the option to pay for temporary residency on BVCC grounds:

- 4 employees in the Old Warden’s House (\$460/month)
- 8 employees in trailers (\$460/month)
- 36 employees in the former Transitional Work Center (\$230/month)

Per the request, this arrangement began in December 2022 “...to provide low-cost temporary accommodations to essential staff.”<sup>2</sup> The request also says that the Department “...cannot continue to house staff in its facilities,” but it does not say why.<sup>3</sup> JBC staff asked why and received this response:

“DOC is currently utilizing locations not built nor intended for workforce housing. These facilities were designed for inmate use over 30 years ago. DOC started using these as a short-term transitional unit for staff entering the greater Buena Vista area. Since then, it has become clear to DOC that long-term housing solutions are needed, not just short-term transitional housing. DOC has explored the transition of the building to long-term workforce housing and decided this was not the best avenue. The building is designed and coded for institutional use; a code occupancy change is needed if the department continues to use the facility for workforce housing. This would result in a mandatory renovation exceeding \$1.2M; the Department estimated this cost just for the shower renovation. Additional costs would go toward the fire code and life safety items. Also, DOC may need to return this facility to inmate use. If used for workforce housing, this would not be an option.”

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<sup>1</sup> Per Executive Branch budget documents, the Superintendent’s Subprogram, “...is responsible for the various DOC facilities as well as the staff involved in the day-to-day management of the facilities. Wardens are responsible for enforcing facility policy, procedure, and practices that are congruent with applicable laws, consent decrees, court orders, legislative mandates, executive orders, and DOC administrative regulations.”

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For the Committee’s background, JBC staff is aware that the current housing situation (with employees on-site) has received press attention.<sup>4</sup> Shortly after that attention, the Department reportedly initiated an internal investigation into the matter.<sup>5</sup>

#### *\$1,000 MONTHLY HOUSING STIPEND*

All BVCC staff are currently receiving the \$1,000 monthly housing stipend made possible by the \$9,064,000 General Fund appropriated by the General Assembly for that purpose. This temporary stipend was made available to DOC staff at BVCC, Sterling, and Limon because of difficulties hiring staff at those facilities. One of the Department’s FY 2023-24 budget requests (submitted on January 17, 2023) says, “Within the Department housing has been a continuing struggle to hire at Buena Vista, Limon, and Sterling in particular.”<sup>6</sup> This shows that the housing challenge in the Buena Vista area is not an “unforeseen circumstance” occurring while the General Assembly is not in session.

#### *HOUSING AVAILABILITY AND AFFORDABILITY IN THE BUENA VISTA AREA*

This supplemental request says, “Buena Vista is experiencing a severe housing shortage, with an average rent of \$2,200 per month when the typical Correctional Officer earns \$4,560 per month pre-tax.”<sup>7</sup> The request does not mention where the \$2,200 per month figure comes from or what it buys (e.g. whole house vs. room in house, house vs. apartment, etc.). DOC responses to JBC staff questions indicate that the \$2,200 per month figure is from RentCafe as part of a \$2,200-2,550 price range for a one-bedroom apartment. Housing costs in the area may be higher or lower depending on the number of bedrooms, number of occupants of those bedrooms, and the type of dwelling (apartment, house, etc.). The request also says that a “lack of available housing, not just affordable housing, within the Buena Vista community continues to be the greater issue.”<sup>8</sup>

#### *WHY OVER-EXPENDITURE AUTHORITY IS DESIRED*

The request says, “All funding in its current housing line item has been assigned to planned projects.” Per the request, the “current housing line item” is *Personal Services* in the Superintendents Subprogram. The request does not provide any additional information about those planned projects. JBC staff asked the Department to “Provide a list of every ‘planned project’ along with a description of the project and cost.” The Department responded as follows:

“The \$12,587,485 figure in the document is incorrect, as we incorrectly listed the Superintendents Subprogram Personal Services line, not the Operating Expenses line. The correct allocation for the Superintendents Subprogram Operating line item is \$6,450,537. These funds have been allocated to the facilities for operating expenses. Wardens oversee these operating allocations and use some funds for day-to-day operating expenses related to management, program support, and administrative support functions. However, these funds are also used for planned projects at their respective facilities. These planned projects include, but are not limited to, security equipment upgrades, annual technology upgrades, annual

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<sup>4</sup> Toomer, Lindsey. “Colorado recruits dozens from Puerto Rico to staff prison, where many live in cubicles.” *Colorado Newsline*. July 27, 2023. <https://coloradonewsline.com/2023/07/27/colorado-recruits-puerto-rico-prison-cubicles/>

<sup>5</sup> Sullivan, Cole. “Department of Corrections launches investigation after workers from Puerto Rico allege discrimination, poor living conditions.” *9NEWS*. August 16, 2023. <https://www.9news.com/article/news/local/next/next-with-kyle-clark/departments-of-corrections-investigation-workers-puerto-rico-allege-discrimination-poor-living-conditions/73-77598cf9-9218-43dd-9b3a-10707ee19ea2>

<sup>6</sup> FY 2022-23 S1 and FY 2023-24 BA1 Prison Caseload, page 48

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inmate mattress upgrades, staff morale enhancement, and other facility improvement projects.”

The Executive Branch’s annual budget request package includes a document called a Schedule 14B. This document shows different categories of actual expenses for each line item. The following table shows the FY 2021-22 categorized expenses for the Superintendent’s Subprogram *Operating Expenses* line item. The table aims to show the variety and amount of expenses that may occur in this line item.

SUPERINTENDENTS SUBPROGRAM OPERATING EXPENSES, ACTUAL EXPENSES FY 2021-22	
CATEGORY	EXPENSE AMOUNT
Noncapitalizable Equipment	\$1,255,202
Supplies & Materials	928,317
Other Capital Equipment - Direct Purchase	616,297
Noncapitalizable Information Technology	403,959
In-State Personal Travel Per Diem	377,819
Clothing and Uniform Allowance	316,544
Gross Proceeds To Attorneys	146,145
Rental of Equipment	144,967
Office Supplies	130,564
Communication Charges - Office Of Information Technology	117,459
Noncapitalizable Furniture And Office Systems	115,763
Official Functions	92,127
Repair and Maintenance	68,652
Reportable Claims Against The State	68,450
Postage	62,103
Claimant Attorney Fees	59,200
Miscellaneous Rentals	40,255
Printing And Reproduction Services	34,034
Noncapitalizable Building Materials	28,292
Judgment Interest	27,013
Prizes And Awards	22,825
Registration Fees	19,422
Purchased Services	18,570
Information Technology Maintenance	17,952
Purchased Medical Services	15,374
Equipment Maintenance	15,053
In-State Common Carrier Fares	7,625
Rental/Motor Pool Mile Charge	6,399
Building Maintenance	6,205
Automotive Supplies	5,574
Office Furniture And Systems - Direct Purchase	5,230
Out-of-State/Non-Employee - Personal Per Diem	5,128
Parking Fees	5,000
Food and Food Service Supplies	4,685
Dues And Memberships	4,512
In-State Travel	4,372
Miscellaneous Fees And Fines	4,134
Grounds Maintenance	3,238
Out-Of-State Personal Travel Per Diem	2,556
Out-Of-State Common Carrier Fares	2,206
Losses	1,708
Freight	1,613
Out-Of-State Travel	1,472
In-State Personal Vehicle Reimbursement	896
Other Maintenance	684
Interest Expense	460
Advertising And Marketing	454
Rental Of Equipment	401

SUPERINTENDENTS SUBPROGRAM OPERATING EXPENSES, ACTUAL EXPENSES FY 2021-22	
CATEGORY	EXPENSE AMOUNT
Books/Periodicals/Subscriptions	367
Parking Fees	162
Medical Laboratory Supplies	69
Motor Vehicle Maintenance	40
Other Operating Expenses	25
<b>Total</b>	<b>\$5,217,573</b>

**PROPOSED SOLUTION**

The Department would use the \$120,000 General Fund (\$360,000 in future years) to outsource employee housing to a yet-to-be-determined external vendor. The amount represents what DOC would pay the external vendor for any housing opportunity that is not filled and paid for by a DOC employee. The request notes that \$360,000 would be the maximum annual liability under the contract, “notwithstanding any agreed-upon annual inflators.” JBC staff therefore assumes that the actual cost in future years could be more than \$360,000, depending on those “annual inflators.”

As JBC staff understands the plan, the Department would contract with a housing vendor to ensure the availability of housing for the 50 DOC staff – and would guarantee a payment of \$600 per “bed” in the program. The Department would first offer these contractually guaranteed beds to DOC staff currently living on BVCC grounds. After that, other DOC staff working at BVCC would have the opportunity to lease one of those beds. The DOC would pay the vendor \$600 per month for any unoccupied bed.

The amount of \$120,000 was calculated as follows: 50 staff (approximate number of staff currently housed at BVCC) \* \$600 per employee per month (which was “based on estimates provided to the Department”) \* 4 months (March 1, 2024 through June 30, 2024) = \$120,000.

JBC staff asked the Department about the source of the \$600 estimate. The Department said that it is an internal estimate that assumes a \$2,400 apartment with two rooms and two people per room (\$2,400/4 people). The request effectively assumes a worst case scenario where none of the beds are occupied and the Department is required to pay \$600 per empty bed for the four-month duration of the contract.

**JBC STAFF ANALYSIS AND CONCLUSION**

As outlined above, JBC staff does not believe that the request meets interim supplemental criteria. However, even if the request met supplemental criteria, staff would still recommend denial of the interim supplemental request for the following reasons.

- 1 **Staff is not convinced that the Department needs over-expenditure authority at this time.**  
The request asserts that the Department cannot spare 1.9 percent of the \$6,450,537 General Fund provided in the FY 2023-24 Long Bill (S.B. 23-214) to cover this expense, saying that existing funding has been assigned to “planned projects.” When asked to provide a specific list of “planned projects,” the Department’s response highlighted a handful of generic examples. This leads staff to doubt the premise that additional funding is necessary.

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Staff's analysis for the DOC's June interim supplemental—expenses related to flooding at the Delta facility—observed that operating expense line items tend to run lean. However, that June request occurred at the end of the fiscal year and pertained to a truly unforeseen circumstance. The current request occurs just three months into the fiscal year and is related to an issue that staff does not view as an unforeseen circumstance. Staff concludes that the Department could plausibly reevaluate its spending priorities and absorb this relatively small expense into its existing budget.

There is also a risk that some or all of the requested funds will get spent on something else within that *Operating Expenses* line item. Per the request, the DOC would only spend money if DOC staff do not opt into the guaranteed housing units. In other words, a \$120,000 expense would occur if all 50 contracted staff beds go unoccupied. If all 50 staff beds are occupied and paid for by those staff, there should be a \$120,000 reversion in that line item (or \$360,000 in future years). If the JBC and General Assembly decide that this proposed housing solution is desirable and/or necessary, staff recommends putting these funds into a new line item within the DOC budget, along with a footnote that is very specific about the use of these funds. That option is not available through the interim supplemental process.

- 2 **The timing and context warrant skepticism about the urgency of this over-expenditure request.** Somebody recently decided that the DOC had to end the practice of allowing DOC staff to live on BVCC grounds, which was a practice that began in December 2022, before the last legislative session. JBC staff does not know why the decision occurred when it did. It seems possible that the decision was a response to the July 27 news report and/or the Department's internal investigation into the matter.

That decision incurs a financial cost because housing staff outside of BVCC is more expensive. In the context of the DOC's \$988.67 million General Fund budget, the estimated financial cost of that decision—\$120,000—is very small. However, rather than absorb this small cost into existing budget and deal with the problem privately, somebody opted to use the interim supplemental process to publicly highlight the issue.

Staff notes prior instances where the Department covered costs using existing appropriations, such as opening 50 female prison beds at La Vista in FY 2022-23, instead asking for those costs (≈\$635,583) to be accounted for in FY 2023-24 (which the JBC denied).<sup>10</sup> Or using vacancy savings to implement various recruitment and retention programs (≈\$20.0 million). Or some of the costs associated with flooding at the Delta facility earlier this year.

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<sup>10</sup> Via email from the DOC to JBC staff on February 17, 2023: "In the supplemental [for FY 2022-23] we asked for the 80 beds and 130 in the BA [budget amendment for FY 2023-24]. These beds at LaVista are open and are currently housing inmates. While all 130 are already opened we broke the ask between the two fiscal years to help the request process."



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- 3 **Staff does not recommend approving this approach to state employee recruitment and retention when the General Assembly is not in session.** Staff views the immediate issue—finding alternative housing for DOC staff living on BVCC grounds—as an Executive Branch issue stemming from a decision made within the Executive Branch. The larger issue—recruiting, retention, and the housing market—cuts across multiple branches of government and jurisdictions: the Executive Branch, the General Assembly, local governments, property owners, private industry, etc. The request also cuts across multiple years, costing an estimated \$360,000 (probably more) in FY 2024-25 and future years.

When the JBC approves an interim supplemental request and authorizes an over-expenditure, it is committing itself to making the adjustment in the supplemental bill that it will present to the General Assembly in the next legislative session. Given the ongoing and complicated nature of the housing problem, the issue may warrant discussion by the General Assembly through the standard supplemental process rather than authorizing an entirely new policy (guaranteed payment of the housing vendor) through an interim supplemental.

- 4 **The Executive Branch has another statutory mechanism at its disposal to reallocate money within the DOC budget to cover a \$120,000 expense should the relevant line item be exhausted.** Statute provides the Executive Branch with the authority to transfer money between line items for like purposes. Section 24-75-108 (1), C.R.S., says,

“Upon approval by the governor, the head of a principal department of state government may, on or after May 1 of any fiscal year and before the forty-fifth day after the close of such fiscal year, transfer moneys from one item of appropriation made to the principal department in the general appropriation act to another item of appropriation made to the same principal department in said act; except that such transfers shall be made only between appropriations for like purposes.”

The requested funds are for the *Operating Expenses* line item in the Superintendents Subprogram. The ultimate aim of the request is to retain staff, saying, “If this request is not funded, the Department will struggle to arrange new housing for its staff living on-site at BVCC and ultimately could result in losing much needed staff in the facility.”<sup>11</sup> In JBC staff’s view, both operating expenses (the line item) and staff retention (the purpose within that line item) are broad enough to allow for considerable flexibility in the application of the “like purposes” section of this statute.

The upshot is that that the Executive Branch may consider a much larger pool of money within the DOC’s existing budget to support a \$120,000 operating expense.

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Staff sees Section 24-75-108 (1), C.R.S., as a fail-safe, not as a primary option or expectation that the Executive Branch handle all unforeseen expenses this way. The purpose of highlighting this statute is to convey to the JBC that a request of this magnitude—\$120,000—could plausibly be handled within the Executive Branch later in the fiscal year. Staff further notes that this statute exists alongside other opportunities for the JBC to provide additional funding for this purpose through the regular supplemental process in January 2024 and the interim supplemental process in June 2024.

*CONCLUSION*

Staff disagrees with the assertion that the requested funds are necessary due to unforeseen circumstances and warrant over-expenditure authority through an interim supplemental. Staff is also not convinced that they are necessary for the Department to implement the solution they proposed.