

JOINT BUDGET COMMITTEE



SUPPLEMENTAL BUDGET REQUESTS FY 2023-24

DEPARTMENT OF MILITARY AND VETERANS AFFAIRS

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

PREPARED BY:
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CONTENTS

Department Overview	1
Summary: FY 2023-24 Appropriation and Recommendation	2
Request/Recommendation Descriptions	2
Prioritized Supplemental Requests.....	3
S1 Spending Authority Extension Ft. Lupton Project.....	3
Statewide Common Policy Supplemental Requests.....	6
Staff Recommendation:	6
Numbers Pages.....	7
Appendix A: Proposed JBC Letter.....	9

DEPARTMENT OF MILITARY AND VETERANS AFFAIRS

DEPARTMENT OVERVIEW

The Department of Military and Veterans Affairs has approximately 5,500 Army and Air National Guard members trained and ready for federal active duty abroad and for preserving life and property during natural disasters and civil emergencies at home in Colorado.

EXECUTIVE DIRECTOR'S OFFICE

- Provides general administrative support to Department divisions including: human resources, budgeting, accounting, and administrative support;
- Provides safekeeping of public arms, military records, and relics and banners of the State;
- Administers the National Guard Tuition Assistance Program; and
- The Adjutant General, as the commander of the State's military forces, provides day-to-day command and control, guidance, policies and procedures, administrative support, and logistics support to the Army National Guard, the Air National Guard, and the Civil Air Patrol.

ARMY & AIR NATIONAL GUARD

- Maintains a reserve of trained forces for the U.S. Armed Forces which are called to active duty by the President;
- Protects life and property during natural disasters and civil emergencies when activated by the Governor; and
- Maintains all military equipment for the State's military forces.

CIVIL AIR PATROL

- Operates as a civilian auxiliary of the United States Air Force;
- Provides volunteers for search and rescue missions, and assists federal and state organizations in disaster or emergency efforts; and
- Operates a Civil Air Patrol cadet program, and provides aerospace education.

DIVISION OF VETERANS AFFAIRS

- Provides assistance to veterans seeking benefits by acting as a power of attorney for veterans and acting as a liaison between counties and the federal government;
- Provides training and payments to County Veterans Service Officers;
- Administers the Western Slope Veterans' Cemetery and its associated fund;
- Through the Colorado Board of Veterans Affairs, disperses the Colorado State Veterans Trust Fund to provide grants for veterans' programs throughout Colorado; and
- Operates the Veterans' One Stop Center (Western Region OneSource) in Grand Junction.

SUMMARY: FY 2023-24 APPROPRIATION AND RECOMMENDATION

DEPARTMENT OF MILITARY AND VETERANS AFFAIRS: RECOMMENDED CHANGES FOR FY 2023-24

	TOTAL FUNDS	GENERAL FUND	CASH FUNDS	REAPPROPRIATED FUNDS	FEDERAL FUNDS	FTE
FY 2023-24 APPROPRIATION						
SB23-214 (Long Bill)	\$148,582,765	\$14,553,944	\$1,961,125	\$65,557	\$132,002,139	2,490.0
Other legislation	692,645	642,645	50,000	0	0	1.6
CURRENT FY 2023-24 APPROPRIATION:	\$149,275,410	\$15,196,589	\$2,011,125	\$65,557	\$132,002,139	2,491.6
RECOMMENDED CHANGES						
Current FY 2023-24 Appropriation	\$149,275,410	\$15,196,589	\$2,011,125	\$65,557	\$132,002,139	2,491.6
S1 Spending authority extension Ft. Lupton project	0	0	0	0	0	0.0
Departments Portion of Statewide Supplemental Request	79,197	84,980	0	0	(5,783)	0.0
RECOMMENDED FY 2023-24 APPROPRIATION:	\$149,354,607	\$15,281,569	\$2,011,125	\$65,557	\$131,996,356	2,491.6
RECOMMENDED INCREASE/(DECREASE)	\$79,197	\$84,980	\$0	\$0	(\$5,783)	0.0
Percentage Change	0.1%	0.6%	0.0%	0.0%	(0.0%)	0.0%
FY 2023-24 EXECUTIVE REQUEST						
Request Above/(Below) Recommendation	\$197,384	\$0	\$197,384	\$0	\$0	0.0

REQUEST/RECOMMENDATION DESCRIPTIONS

S1 SPENDING AUTHORITY EXTENSION FT. LUPTON PROJECT: The request is for \$197,384 in cash funds from the Real Estate Proceeds Cash Fund. The Department states that this supplemental is necessary to disburse \$197,384 in cash funds currently encumbered in four contracts related to the Ft. Lupton Project. This project was initiated in FY 2020-21 using a combination of \$6.6 million in federal funds and \$2.9 million in cash funds.

Upon further investigation, JBC Staff has determined that the Ft. Lupton Project and associated funding were not approved by the Capital Development Committee (CDC), the Joint Budget Committee, or the Colorado General Assembly in FY 2020-21 or any subsequent year. Although statute states that the Real Estate Proceeds Cash Fund is subject to appropriation, the project and associated funding request was never brought to the General Assembly, and the Controller provided spending authority for this project without legislative action.

PRIORITIZED SUPPLEMENTAL REQUESTS

S1 SPENDING AUTHORITY EXTENSION FT. LUPTON PROJECT

	REQUEST	RECOMMENDATION
TOTAL	\$197,384	\$0
FTE	0.0	0.0
General Fund	0	0
Cash Funds	\$197,384	0
Reappropriated Funds	0	0
Federal Funds	0	0

Does JBC staff believe the request meets the Joint Budget Committee's supplemental criteria? **NO**

[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.]

Explanation: JBC staff feels that it is inappropriate during the supplemental process to request an extension of funding for a capital project that neither the JBC, the CDC, nor the Colorado General Assembly has ever approved. Furthermore, the characterization of the request as an ongoing operating expense is factually inaccurate. The Ft Lupton Project is a capital project, and therefore, the Department should submit this request through the Capital Development Committee for review.

DEPARTMENT REQUEST: The Department requests \$197,384 in one-time funds from the Real Estate Proceeds Cash Fund. These funds are currently encumbered in four contracts related to the Ft. Lupton Readiness Center expansion project. The request is to add this appropriation to the Executive Director's Office Operating Expenses line item.

STAFF RECOMMENDATION: **Staff recommends denial of the request.** Based on further investigation, JBC staff has verified that the Ft. Lupton Project was not approved by the JBC, the Capital Development Committee (CDC), or the Colorado General Assembly in FY 2020-21 or in any subsequent year. No appropriation for this project has ever been provided. Given that the request is for a capital project, staff feels it is inappropriate to provide the funding through the Executive Director's Office Operating Expense line item. The Department's S1 (Spending Authority Extension Ft. Lupton Project) is a capital request and should be submitted for review through the Capital Development Committee.

Staff is particularly concerned about the following:

- 1 The Office of State Planning and Budgeting characterized this request as an extension of spending authority in the Executive Director's Office Operating Expense line item, although the request was actually for an unapproved capital project;
- 2 The State Controller's Office authorized \$2.85 million in cash fund spending authority from the Real Estate Proceeds Cash Fund for the Ft. Lupton project without approval of the Capital Development Committee, the JBC, or the Colorado General Assembly, despite statutory language that makes spending from this fund subject to appropriation. Of the total, nearly \$2.7 million has already been expended; and

- 3 Communication from the State Controller indicates that the Department previously expended funds for other projects from the Real Estate Proceeds Cash Fund that were not approved by the CDC, JBC, or the Colorado General Assembly.

Given the extraordinary nature of this situation, JBC Staff has prepared a draft letter for the Committee's consideration highlighting these concerns.

BACKGROUND AND STAFF ANALYSIS: The Department and OSPB submitted a one-paragraph description of this request that stated that it was a request to "extend spending authority in order to disburse \$197,384 from the DMVA Real Estate Proceeds fund" and "not for any additional funding". It has taken JBC staff multiple days to extract a more complete picture of the situation.

Based on additional information from the Department, the Fort Lupton Expansion Project was initially slated to go through the Capital Development Committee and the State Architect's Office (SAO) during the 2020 legislative session. The project did go through the SAO and received their approval. However, when the COVID pandemic began, all capital project requests were rejected by the Capital Development Committee. Additionally, as a budget balancing measure, \$4.9 million in cash funds were transferred from the Department's Real Estate Proceeds Cash Fund to the General Fund. This action left a balance of approximately \$5.1 million in the Real Estate Proceeds Cash Fund at that time. (Subsequently, in FY 2022-23 the JBC sponsored legislation, S.B. 23-141 (General Fund Transfer from Capital Construction), that restored the \$4.9 million to the Real Estate Proceeds Cash Fund.)

In FY 2020-21, the Department was concerned that more cash fund sweeps were imminent. Because the National Guard Bureau had slated this project to commence, meaning they had earmarked the federal funds, the Department felt they needed to continue with the project. The internal Departmental consensus was to utilize the state share of funds upfront as opposed to during the project's duration, thus committing the funds to ensure execution. These funds were used for planning and design, not construction.

The Department states that because they utilized the cash funds for design and planning rather than construction, they were able to treat the funds as operating. The Department has indicated that it believed it was within its statutory authority to initiate the expenditure without an appropriation by the General Assembly.

The Office of the State Controller did not object and approved the spending authority document. The Department provided a copy of an email chain from the Office of the State Controller, dated April 1, 2022, indicating that the OSC was taking the position that the Real Estate Proceeds Cash Fund *is* subject to appropriation but that, because the Controller's Office had previously authorized spending without appropriation "the statutory language is unclear". The OSC had therefore agreed to continue that approach for two years (through FY 2022-23) and then have the DMVA either obtain an interpretation of statute from the Office of the Attorney General indicating that the fund is not subject to appropriation or revise the statutory language.

The Department indicates it was under the impression the spending authority approved by the State Controller would roll forward through FY 2023-24, based on the roll forward authority granted by the Office of State Controller in FY 21-22 (despite the letter from the Controller indicating the need

for clarification or legislative action before FY 2023-24). Consistent with its April 1, 2022 communication, the Office of the State Controller declined to extend the spending authority for an additional year.

The table below shows the allocation of funds, expenditures, and remaining balance over the previous three fiscal years for the Ft. Lupton Project.

FORT LUPTON PROJECT: REAL ESTATE PROCEEDS CASH FUND			
FISCAL YEAR	ALLOCATED	EXPENDED	BALANCE
FY 2020-21	\$2,850,400	\$239,615	\$2,610,785
FY 2021-22	2,610,785	504,039	2,106,746
FY 2022-23	2,106,746	1,909,362	197,384
FY 2023-24	197,384		

JBC Staff and Legislative Legal Services are in agreement that funds from The Real Estate Proceeds Cash Fund are subject to appropriation by the Colorado General Assembly and that Section 28-3-106 (1)(s)(I), C.R.S. is neither unclear nor ambiguous.

If, in the judgment of the adjutant general, any real estate that has been acquired for military purposes is unsuitable for military purposes, the adjutant general, by and with the approval of the governor, in writing, has authority to sell, trade, or otherwise dispose of such real estate, but, except as otherwise provided by subsection (1)(s)(II) of this section, such real estate shall not be disposed of for less than its appraised value. The appraised value of such real estate shall be determined by an appraiser who is licensed or certificated pursuant to part 6 of article 10 of title 12 and who is selected by the adjutant general from a list of three qualified individuals submitted to the adjutant general by the department. Appraisers shall be selected for the list, and their fees shall be negotiated in accordance with the standards established by part 14 of article 30 of title 24. The adjutant general, by and with the advice and approval of the governor, is authorized to lease any property belonging to the department when it is not needed for the immediate use of the department. All conveyances that are required for the purpose of this section shall be executed by the governor under the seal of the state, and the proceeds of all sales, trades, or other disposition shall be placed in an account to be invested by the state treasurer as provided in section 24-36-113. Any interest earned on the investment or deposit of such proceeds shall remain in such account and shall not be credited to the general fund or any other fund of the state. Said proceeds and any interest thereon shall be disbursed by authority of the adjutant general, subject to appropriation by the general assembly, only for the construction, repair, improvement, acquisition, or costs of acquisition or sale of armories throughout the state. Costs of acquisition or sale shall include but need not be limited to appraisals, site surveys, environmental surveys, title work, property inspections, closing costs, legal fees, real estate fees, site preparation, or utility studies. Prior to disposing of any real property pursuant to the provisions of this subsection (1)(s), the adjutant general shall submit a report to the capital development committee that describes such real property, the maintenance costs related to such real property, the current value of such real property, any conditions or limitations that may restrict the use of such real property, and the terms of the proposed disposition of such real property. The capital development committee shall review any such report that is submitted to the capital development committee and shall provide recommendations to the adjutant general concerning the proposed real property disposition within thirty days after the date of receipt of such report. The adjutant general shall not complete any such real property disposition without considering any recommendations of the capital development committee that are provided within such thirty-day period.

Based on correspondence obtained between the Office of the State Controller and DMVA, staff is concerned that there has apparently been a history of spending from the Real Estate Proceeds Cash Fund without legislative authority, although staff does not have related details at this time.

STATEWIDE COMMON POLICY SUPPLEMENTAL REQUESTS

These requests are not prioritized and are not analyzed in this packet. The JBC will act on these items later when it makes decisions regarding common policies.

DEPARTMENTS PORTION OF STATEWIDE SUPPLEMENTAL REQUEST						
	TOTAL FUNDS	GENERAL FUND	CASH FUNDS	REAPPROPRIATED FUNDS	FEDERAL FUNDS	FTE
SNP Risk management	\$97,178	\$97,178	\$0	\$0	\$0	0.0
DPA Annual fleet supplemental	(10,899)	(5,116)	0	0	(5,783)	0.0
SNP OIT Real time billing	(7,082)	(7,082)	0	0	0	0.0
DEPARTMENT'S TOTAL STATEWIDE SUPPLEMENTAL REQUESTS	\$79,197	\$84,980	\$0	\$0	(\$5,783)	0.0

STAFF RECOMMENDATION: The staff recommendation for these requests is pending Committee action on common policy supplementals. Staff asks permission to include the corresponding appropriations in the Department's supplemental bill when the Committee acts on common policy supplementals. If staff believes there is reason to deviate from the common policy, staff will appear before the Committee at a later date to present the relevant analysis.

NUMBERS PAGES

JBC Staff Supplemental Recommendations - FY 2023-24
Staff Working Document - Does Not Represent Committee Decision

Appendix A: Numbers Pages

	FY 2022-23 Actual	FY 2023-24 Appropriation	FY 2023-24 Requested Change	FY 2023-24 Rec'd Change	FY 2023-24 Total w/Rec'd Change
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DEPARTMENT OF MILITARY AND VETERANS AFFAIRS
Michael Loh, Adjutant General

S1 Spending authority extension Ft Lupton project

(1) EXECUTIVE DIRECTOR AND ARMY NATIONAL GUARD

Operating Expenses	<u>2,168,465</u>	<u>398,342</u>	<u>197,384</u>	<u>0</u>	<u>398,342</u>
General Fund	259,104	302,342	0	0	302,342
Cash Funds	1,909,361	96,000	197,384	0	96,000
Reappropriated Funds	0	0	0	0	0
Federal Funds	0	0	0	0	0

Total for S1 Spending authority extension Ft Lupton project	2,168,465	398,342	197,384	0	398,342
FTE	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>
General Fund	259,104	302,342	0	0	302,342
Cash Funds	1,909,361	96,000	197,384	0	96,000
Reappropriated Funds	0	0	0	0	0
Federal Funds	0	0	0	0	0

Totals Excluding Pending Items					
MILITARY AND VETERANS AFFAIRS					
TOTALS for ALL Departmental line items	147,514,254	149,275,410	197,384	0	149,275,410
FTE	<u>2,513.9</u>	<u>2,491.6</u>	<u>0.0</u>	<u>0.0</u>	<u>2,491.6</u>
General Fund	11,546,806	15,196,589	0	0	15,196,589
Cash Funds	4,317,437	2,011,125	197,384	0	2,011,125
Reappropriated Funds	75,000	65,557	0	0	65,557
Federal Funds	131,575,011	132,002,139	0	0	132,002,139

APPENDIX A: PROPOSED JBC LETTER

STATE OF COLORADO

REPRESENTATIVES

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STAFF DIRECTOR

CRAIG HARPER

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Brigadier General Laura Clellan
Adjutant General
Colorado Department of Military Affairs

Mr. Bob Jaros
Colorado State Controller

Mr. Mark Ferrandino
Director
Colorado Office of State Planning and Budgeting

Dear General Clellan, Mr. Jaros, and Mr. Ferrandino:

It has come to the Joint Budget Committee's attention that beginning in FY 2020-21, the Department of Military and Veterans Affairs, with the approval of the Governor's Office and the Office of the State Controller, authorized the expansion of the Fort Lupton Readiness Center without obtaining approval from the General Assembly. This included spending nearly \$2.7 million from the Real Estate Proceeds Cash Fund without obtaining an appropriation, although this cash fund, created in Section 28-3-106 (1)(s)(I), C.R.S., is unequivocally subject to appropriation.

The General Assembly has consistently supported the mission of the Department of Military and Veterans Affairs and appropriated substantial funds from the General Fund and the Real Estate Proceeds Cash Fund to the Department when requested, which makes the Department's failure to comply with the law particularly disappointing.

Thank you for your assistance in ensuring that this situation is not repeated.
Sincerely,

Representative Shannon Bird
Chair

Cc:
Senator Nick Hinrichsen
Chair, Capital Development Committee

Kerri Hunter
Colorado State Auditor