

**COLORADO GENERAL ASSEMBLY
JOINT BUDGET COMMITTEE**



**INTERIM SUPPLEMENTAL REQUESTS
FOR FY 2016-17**

DEPARTMENT OF LOCAL AFFAIRS

**JBC Working Document - Subject to Change
Staff Recommendation Does Not Represent Committee Decision**

**Prepared By:
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Interim Supplemental Requests

INTERIM SUPPLEMENTAL REQUEST 1331 KIT CARSON MITIGATION PLAN

	Request	Recommendation
Total	<u>\$685,446</u>	<u>\$0</u>
FTE	0.0	0
General Fund	685,446	0
Cash Funds	0	0
Federal Funds	0	0

<p>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.]</p>	NO
<p>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.]</p>	YES
<p>JBC staff and the Department agree that the request is related to an unforeseen circumstance that arose when the General Assembly was not in session. However, based on consultation with the Office of Legislative Legal Services, staff does not believe that the request meets the requirement of Section 24-75-111 (3) (a), C.R.S. that "overexpenditures shall be consistent with all statutory provisions applicable to the program, function or purpose for which the overexpenditure is made..." The OLLS was unable to identify any specific statutory authority in the Department of Local Affairs for backfilling lost city government revenue.</p>	

Department Request: The Department of Local Affairs requests \$685,446 General Fund overexpenditure authority in its Other Local Government Grants line item to minimize the impact of the closure of the Kit Carson Correctional Facility (KCCF) on the City of Burlington.

The General Assembly appropriated \$3,000,000 to the Department of Corrections for FY 2016-17 to attempt to prevent the closure of the facility, but negotiations with the owner of the facility, the Corrections Corporation of America (CCA), were unsuccessful, and CCA closed the facility at the end of July 2016. The request indicates that, through the regular supplemental process, the \$685,446 in this request will be supported by a reduction in the appropriation to DOC for External Capacity Sustainability (where the \$3.0 million was appropriated).

Prior to its closure, the facility employed 142 staff, who lived both in Kit Carson and surrounding areas, including over the border in Kansas. The closure is expected to have

significant impacts on the local economy, including on revenue to the city and county, which received a combined \$1.9 million in revenue from the facility in CY 2015.

The current request is to backfill revenue lost to the *City of Burlington*:

- \$614,468 for payments to city-owned utilities; and
- \$70,978 for a \$0.25 per inmate per diem paid to Burlington by CCA.

Both amounts are based on an anticipated full-year of lost revenue, reflecting the 3 year average of city receipts for utilities and the average per diem payment from CY 2013 to CY 2015.

The Department proposes reflecting the additional sum in an existing "Other Local Government Grants" line item.

The request indicates that OSPB will submit an additional budget request for lost property taxes in the future. The Governor's Office of Economic Development and the Tourism Office are also working with the region using existing resources.

Additional background on Kit Carson County and City of Burlington Economies:

In response to staff questions, the Department of Local Affairs provided additional data on the significance of the closure to the community.

2015 data/estimates

County/City Population	Kit Carson County - 8,240 City of Burlington – 4,188 Both figures include 935 prisoners
County/City Jobs	Kit Carson County - 4,395 City of Burlington – 2,125
Correctional Facility (KCCF) jobs	153 direct employment 3.5 percent of county jobs; 7.2 percent city jobs Additional 30 are calculated to be indirect or "induced" 62 percent KCCF employees live in Kit Carson, 17 percent other Colorado counties, and 22 percent elsewhere (Kansas)
KCCF wages and salary	\$7.1 million (5.0 percent county wages)

KCCF Property Taxes

- o Property Tax Revenue of Burlington Prison to Local Governments
 - 2016 Local Government Budget Year (2015 Property Tax Year)

Local Government	Property Tax from KCCC	As Percent of Total Property Tax Revenue	As Percent of Total Budgeted Appropriation
Kit Carson County	\$567,058	10%	3%
Kit Carson County Health Service District	\$44,807	10%	0.3%
Burlington RE-6J School District	\$409,160	18%	5%
Fairview Cemetery District	\$8,513	15%	11%
Burlington Fire Protection District	\$30,857	15%	22% (excludes 1 time project expenditures)
Burlington, City of	\$128,446	37%	3% (excludes enterprise funds)
Total	\$1,188,841		

Staff anticipates that declines in property tax paid to the county, city, school districts will be felt in early CY 2018 (state FY 2017-18), based on 2017 revisions to the assessed value of the KCCF property.

Staff Recommendation: Staff recommends that the Committee deny the request. Staff is sympathetic to the request's motive: to assist the City of Burlington in addressing the impact of the prison closure. However, *based on extensive discussions with the Office of Legislative Legal Services, staff does not believe there is sufficient statutory authority within the Department of Local Affairs to support the interim supplemental request that has been submitted.*

If the Committee wishes to assist the city and county by backfilling lost revenue, staff suggests that the Committee (or other members of the General Assembly) introduce legislation during the 2017 legislative session to provide the necessary statutory authority. This delay will also provide the Executive Department additional time to formulate a plan for how best to assist the city and county in recovering from the Kit Carson facility closure.

Staff Analysis:

Statutory Authority

To understand whether the request is consistent with statutory requirements, JBC and OLLS staff examined various existing DOLA statutory provisions. For example, Section 24-32-303, C.R.S., outlines powers of the director of the Division of Commerce and Development in the Department (operationally subsumed in the Division of Local Government) as including:

(1) (d) Expenditure of state funds, within the appropriations, allocations, and directives of the general assembly or the governor, for the encouragement and stimulation of local planning, promotion, and development activities.

Section 24-32-803, C.R.S., outlines powers of the Office of Rural Development (also subsumed in the Division of Local Government) as including:

(1) (b) Encouraging and, when requested, assisting local governments to develop mutual and cooperative solutions to rural community development.

While there is clear statutory authority in various parts of the statute for activities to encourage, stimulate, and promote local development activities, *the OLLS could not find any specific statutory authority that would authorize the Department to directly backfill a revenue reduction experienced by a local government.* Staff notified the Department of this concern and suggested that they cite the statutory authority they felt was most relevant. At the time this document was submitted for printing, no additional statutory justification had been provided.

Other Concerns about the Request

- The majority of revenue the request proposes to backfill is for city-administered utilities. *However, a significant portion of that revenue is used as a pass-through to Xcel Energy for purchase of electricity. **Staff does not believe the State should provide funds to purchase electricity that is no longer needed.*** In fact, the facility is likely to continue to use some utilities—though at a far lower level—as it is retaining a skeleton staff for maintenance and security.
- Providing a large grant to backfill lost rate-payer revenue for a city-owned business (the utilities) could change the legal status of these utilities from being TABOR enterprises. Staff has not yet received a clear response from the Executive Branch about how this funding might affect the legal status of the utilities. Section 2(d) of Article 10, Section 20 of the state constitution defines the term enterprise as: “a government owned business authorized to issue its own revenue bonds and receiving under 10% of annual revenue in grants from all Colorado state and local governments combined.”
- Finally, staff recognizes that the closure of KCCF poses a significant economic hardship on the local economy and the city budget. *However, it does not appear to staff that delaying action on this proposal until the General Assembly is in session is likely to be devastating to the city government.* A simplified version of the city's 2014 audited financial statements is attached with a link to the complete statements. Based on this data:
 - The **per-diem revenue represented 2.4 percent of revenue for Burlington's general government activities** in 2014.
 - **Utilities revenue from KCC represented 9.6 percent of gross utilities revenue in 2014—a more significant share. However, 40.8 percent of total utility revenue (56.6 percent of total electric utility revenue) was used to purchase power** from Xcel, which cost should decline in proportion to use.

- **Based on a rough analysis** that reduces 2014 utility revenue by the KCCF amount and reduces purchased power from Xcel in the same proportion--but otherwise maintains all utility expenses flat—**staff believes that in 2014 the utilities would still have been profitable and able to transfer \$700,000-\$800,000 to the city's General Fund, even in the absence of KCCF revenue.** While the analysis is rough, it suggests that the requested backfill is not required on an *emergency* basis.

Staff understands that the city took on additional water/sewer debt for infrastructure to support the KCC facility. Staff also understands that the city is facing a water crisis which requires substantial investment: based on the presence of excessive nitrates in the water supply, it is being required by the Department of Public Health to invest in an expensive new water mixing facility. Due to the closure of KCCF, other rate payers will bear a larger share of the costs for the city's water and sewer systems. ***The State may want to assist the community with an additional grant for the new water mixing facility or some other related help that would ease the burden on rate-payers*** (and there is existing statutory authority for this at Section 23-32-106 (1) (g), C.R.S.); ***however, this is not the request that has been submitted.***

The rules governing interim supplementals in Section 24-75-111 (5), C.R.S., require the Committee to introduce all interim supplementals that it approves.

City of Burlington
CY 2014 Audited Statements
SIMPLIFIED For complete statements see: <https://dola.colorado.gov/lgis/>

Government-type Activity		Kit Carson Correctional Facilities Usage	2014 Actual	2016 Budget
Revenues				Request - Backfill
Taxes	\$1,688,246	Utilities	603,675	614,468
Intergovernmental	372,731	Per-diem Payment	64,972	70,978
Charges for services	176,530	Total	668,647	685,446
Housing authority	101,006			
Other	335,426			
Total Revenue	2,673,939			
		2014 Per diem revenue as % general government revenue	2.4%	
		2014 KCCF as % gross utilities operating revenue	9.6%	

Expenditures	
Government departments, economic development, welcome center, etc.	3,054,693

Change in Net Position	
Revenues above/(below) expense	(380,754)
Net Operating Transfers In	825,364 <i>Transfers from business-type activities</i>
Revenues+transfers over/under expenditures	444,610
Fund Balance - Beginning	385,083
Fund Balance - Ending	829,693

Business-type Activities except Airport	Electric	Water and Sewer	Solid Waste	Total excluding airport	
Operating Revenues					
Charges for Services	4,443,513	1,280,481	451,968	6,175,962	
Connect fees and penalties	100,775	31,600	0	132,375	
Total Operating Revenues	4,544,288	1,312,081	451,968	6,308,337	
Operating Expenses					
Salaries and benefits	607,851	307,832	0	915,683	
Operating costs and miscellaneous (vehicles, supplies, utilities)	234,858	405,856	31,602	672,316	
Purchased power	2,573,191	0	0	2,573,191	40.8% of total utility operating revenue and 56.6% of electric operating revenue
Purchased hauling expense	0	0	419,849	419,849	
Depreciation	148,573	134,740	0	283,313	
Total Operating Expenses	3,564,473	848,428	451,451	4,864,352	
Operating Income/(Loss)	979,815	463,653	517	1,443,985	
Non-operating Income/(Expense)					
Interest Expense	0	(103,343)	0	(103,343)	
Bonding Expense	0	(198,257)	0	(198,257)	
Other Revenue/(Expense)	263	8,993	0	9,256	
Operating transfers in/(out)	(817,250)	(53,215)	0	(870,465)	<i>Transfers to general government, airport</i>
Net non-operating income/(expense)	(816,987)	(345,822)	0	(1,162,809)	
Change in net position	162,828	117,831	517	281,176	
Beginning Position	3,525,163	2,001,673	29,443	5,556,279	
Ending Position	3,687,992	2,119,505	29,960	5,837,457	

Transfer out (used to support general government revenue) as percentage total revenue	18%	4%	0%	14%
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Rough estimate of impact if no KCCF on 2014 Utilities Budget	
Total Utility Operating Revenue	6,308,337
Less loss KCCF revenue	(603,675)
Net Revenue after KCCF	5,704,662
Operating costs	4,864,352
Less reduction KCCF electric expense*	(246,241)
Net operating cost without KCCF	4,618,111
Total Utilities Operating Income/loss	1,086,551
Net non-operating income/expense excluding transfers**	(292,344)
Balance available for profit/transfer	794,207

*Reflects assumption that only reduction to utility operating costs is to cost of purchased power (41% of KCC revenue reduction)
**Net non-operating income expense of (\$1,162,809) less transfer of (\$870,465)