

# MEMORANDUM



## JOINT BUDGET COMMITTEE

TO Chairman Hamner and JBC Members  
FROM Carolyn Kampman, JBC Staff (303-866-4959)  
DATE April 9, 2018  
SUBJECT Letter from State Controller Concerning the Parole Savings Fund

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Director Ziegler recently received a letter from the State Controller [see Attachment A] concerning the Parole Savings Fund, which was created through H.B. 17-1326. **The Department of Local Affairs (DOLA) asserts that while the General Assembly has not appropriated any money from the Parole Savings Fund, the General Assembly intended to authorize DOLA to spend \$1,761,140 from this fund in FY 2017-18 for the small business lending and grant programs that were created through H.B. 17-1326. The State Controller agrees with DOLA, but is seeking clarification from the Joint Budget Committee before providing the requested spending authority.** Staff has provided below the relevant excerpt from the State Controller's letter:

“In accordance with [House Bill 17-1326], the Office of the State Controller approved spending authority of \$1,761,140 in the General Fund to be transferred to the Parole Savings Fund; no additional spending authority was provided for in the Parole Savings Fund since statute requires that the Parole Savings Fund be appropriated by the General Assembly. However, according to the Department of Local Affairs, while not explicitly stated, the intent of House Bill 17-1326, was to grant spending authority for the \$1,761,140 in the Parole Savings Fund. The Department's argument is supported by the fact that any unspent or unencumbered monies must be returned to the General Fund at year end and therefore, the intent of the Bill was not simply to transfer revenue to a fund where it could not be spent and then subsequently revert the revenue to the General Fund.

The Office of the State Controller has reviewed the House Bill and agrees that while not explicitly stated, the intent was to allow spending authority for the \$1,761,140 in the Parole Savings Fund. If the Joint Budget Committee concurs, the Office of the State Controller would like to provide the requested spending authority.”

**Staff does not agree with DOLA's assertion and the State Controller's interpretation of H.B. 17-1326.** The remainder of this memorandum provides background information about H.B. 17-1326 and the Parole Savings Fund, and Committee actions to date related to this legislation. **Staff has drafted a letter for the Committee's consideration to be responsive to the State Controller's inquiry** [see Attachment B].

Overview of House Bill 17-1326

House Bill 17-1326 created the Justice Reinvestment Crime Prevention Initiative in DOLA’s Division of Local Government. This new program will provide small business loans and grants designed to reduce crime and promote community development in the target communities of north Aurora and southeast Colorado Springs. These programs are subject to available appropriations. The act also created the Parole Savings Fund, which consists of money generated by savings resulting from parole-related provisions in H.B. 17-1326 and appropriated to the Fund by the General Assembly. Pursuant to Section 24-32-120 (5), C.R.S., **the Parole Savings Fund is subject to annual appropriation by the General Assembly to two departments for two purposes (emphasis added):**

“(5) (a) The parole savings fund, referred to in this subsection (5) as the "fund", is hereby created in the state treasury. The fund consists of money generated by savings created in enacting House Bill 17-1326 and appropriated to the fund by the general assembly.

(b) The state treasurer shall credit all interest and income derived from the deposit and investment of money in the fund to the fund.

(c) The state treasurer shall transfer any unexpended and unencumbered money remaining in the fund at the end of a fiscal year to the general fund.

(d) Subject to annual appropriation by the general assembly, the division of local government may expend money from the fund to provide small business lending and grants aimed at reducing crime and promoting community development in the target communities of north Aurora and southeast Colorado Springs.

(e) Subject to annual appropriation by the general assembly, the department of corrections may expend money from the fund for external capacity if the anticipated reduction in the use of private prison beds from the parole changes enacted in House Bill 17-1326 are not achieved.”

As indicated in Section 24-32-120 (5)(c), C.R.S., above, **any unexpended and unencumbered money remaining in the Parole Savings Fund at the end of FY 2017-18 will be transferred to the General Fund.**

The act included an appropriation clause that reduced General Fund appropriations to the Department of Corrections (DOC) for FY 2017-18 by a total of \$5,865,182 General Fund based on the projected impact of various changes to parole. As detailed in the following table, the act appropriated this same amount of General Fund to DOLA for several purposes, including an appropriation of \$1,761,140 into the Parole Savings Fund.

FY 2017-18 APPROPRIATION ADJUSTMENTS IN H.B. 17-1326	
	GENERAL FUND
Department of Corrections (DOC) Appropriation Changes	
Payments to local jails	\$13,595
Payments to in-state private prisons	(2,165,720)
Payments to pre-release parole revocation facilities	(1,082,860)
Payments to community return to custody facilities	(2,775,738)
Parole personal services	36,254
FET	(0.8 FTE)
Parole operating expenses	5,463
Computer programming	103,824
<b>Total DOC adjustments</b>	<b>(\$5,865,182)</b>

FY 2017-18 APPROPRIATION ADJUSTMENTS IN H.B. 17-1326	
	GENERAL FUND
Department of Local Affairs (DOLA) Appropriation Changes	
Division of Local Government	\$51,001
FTE	(0.8 FTE)
Computer programming	48,288
Legal services	4,753
Small business loans	1,000,000
Grants for crime reduction and community development	3,000,000
Parole Savings Fund	1,761,140
<b>Total DOLA Adjustments</b>	<b>\$5,865,182</b>
<b>Overall General Fund Adjustments</b>	<b>\$0</b>

Fiscal Note Estimates and DOLA Request for FY 2018-19

The Legislative Council Staff fiscal note for H.B. 17-1326 reflected savings for DOC increasing to \$7,241,835 General Fund in FY 2018-19. With respect to DOLA, the fiscal note reflected ongoing administrative expenses for the two programs, but it did not reflect a specific dollar amount for the lending and grant programs as these amounts “will depend on future appropriations made by the General Assembly”.

In addition to ongoing funding to administer the two new programs<sup>1</sup>, DOLA’s budget request included continuation of the FY 2017-18 appropriations for three new line items:

- H.B. 17-1326 Crime Prevention Initiative Grants: \$3,000,000
- H.B. 17-1326 Crime Prevention Initiative Small Business Lending: \$1,000,000
- H.B. 17-1326 Crime Prevention Initiative Parole Savings Fund: \$1,761,140

JBC Staff Recommendation and Committee Action

As detailed in the following table, staff recommended appropriating \$4.1 million General Fund to DOLA for FY 2018-19 for the ongoing implementation of two new programs.

H.B. 17-1326: GENERAL FUND APPROPRIATIONS TO DOLA			
	FY 2017-18	FY 2018-19 Recommendation	Change
Division of Local Government	\$51,001	\$55,928	\$4,927
FTE	(0.8 FTE)	(1.0 FTE)	(0.2 FTE)
Computer programming	48,288	6,592	(41,696)
Legal services	4,753	1,426	(3,327)
Small business lending	1,000,000	1,000,000	0
Grants for crime reduction and community development	3,000,000	3,000,000	0
Appropriation to the Parole Savings Fund	1,761,140	0	(1,761,140)
<b>Total DOLA Adjustments</b>	<b>\$5,865,182</b>	<b>\$4,063,946</b>	<b>(\$1,801,236)</b>

Staff did not, however, recommend appropriating any additional General Fund to the Parole Savings Fund in FY 2018-19. The Legislative Council Staff fiscal note for H.B. 17-1326 anticipated DOC savings to increase by \$1,231,112 in FY 2018-19, so one could argue that the appropriation to the Parole Savings Fund should increase by this amount in FY 2018-19 (\$2,992,252). However, information is not yet available to indicate whether the parole changes are resulting in the anticipated

<sup>1</sup> Funding for staff and operating expenses to implement H.B. 17-1326 programs is included in the Field Services, Program Costs line item within the Division of Local Government.

General Fund savings. In addition, staff could not identify any benefit to continuing to set aside General Fund in this separate cash fund. Instead, **staff recommended that the Committee consider as part of the figure setting process for DOC whether the \$1,761,140 in the Parole Savings Fund should be appropriated to the DOC for FY 2017-18 to cover external capacity costs. Staff indicated that if the Committee chose not to appropriate money from the Parole Savings Fund to DOC, this money would revert to the General Fund.**

The Committee approved staff's recommendation for DOLA. With respect to DOC, **the Committee approved an increase in General Fund appropriations to DOC for FY 2017-18 for external capacity; this increase exceeded the amount available in the Parole Savings Fund. Given that the \$1,761,140 that was appropriated to the Parole Savings Fund will revert to the General Fund at the end of FY 2017-18, it will partially offset the mid-year increase in General Fund appropriations for external capacity.**

**Staff concludes that the Committee considered whether to appropriate money in the Parole Savings Fund to DOLA or to DOC for FY 2017-18, and decided not to authorize expenditures from the Fund for either statutorily authorized purpose. Given that this fund is clearly subject to annual appropriation, absent an appropriation by the General Assembly, the Controller's Office should not authorize DOLA to make expenditures from this fund.**



# COLORADO

Office of the State Controller

Department of Personnel  
& Administration

1525 Sherman St.  
Denver, CO 80203

March 21, 2018

Mr. John Ziegler, Director  
Joint Budget Committee  
200 East 17<sup>th</sup> Avenue, 3<sup>rd</sup> Floor  
Denver, Colorado 80203

Dear Mr. Ziegler:

The appropriation clause in House Bill 17-1326 provided "For the 2017-18 state fiscal year, \$5,865,182 is appropriated to the department of local affairs. This appropriation is from the general fund. To implement this act, the department may use this appropriation as follows...\$1,761,140 to the parole savings fund created in section 24-32-120(5)."

According to Section 24-32-120(5), C.R.S., "The parole savings fund...consists of money generated by savings created in enacting House Bill 17-1326 and appropriated to the fund by the general assembly." Part 5(c) states, "The state treasurer shall transfer any unexpended and unencumbered money remaining in the fund at the end of the year to the general fund." And, Part 5(d) states, "Subject to annual appropriation by the general assembly, the division of local government may expend money from the fund to provide small business lending and grants..."

In accordance with the Bill, the Office of the State Controller approved spending authority of \$1,761,140 in the General Fund to be transferred to the Parole Savings Fund; no additional spending authority was provided for in the Parole Savings Fund since statute requires that the Parole Savings Fund be appropriated by the General Assembly. However, according to the Department of Local Affairs, while not explicitly stated, the intent of House Bill 17-1326, was to grant spending authority for the \$1,761,140 in the Parole Savings Fund. The Department's argument is supported by the fact that any unspent or unencumbered monies must be returned to the General Fund at year end and therefore, the intent of the Bill was not simply to transfer revenue to a fund where it could not be spent and then subsequently revert the revenue to the General Fund.

The Office of the State Controller has reviewed the House Bill and agrees that while not explicitly stated, the intent was to allow spending authority for the \$1,761,140 in the Parole Savings Fund. If the Joint Budget Committee concurs, the Office of the State Controller would like to provide the requested spending authority.

Sincerely,

A handwritten signature in blue ink that reads "Bob Jaros".

Bob Jaros, State Controller



# STATE OF COLORADO

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JOINT BUDGET COMMITTEE  
200 EAST 14TH AVENUE, 3RD FLOOR  
LEGISLATIVE SERVICES BUILDING  
DENVER, CO 80203  
TELEPHONE 303-866-2061  
<http://leg.colorado.gov/agencies/joint-budget-committee>

April 11, 2018

Mr. Robert Jaros  
State Controller  
Department of Personnel  
1525 Sherman Street, 5<sup>th</sup> Floor  
Denver, CO 80203

Dear Mr. Jaros:

The Joint Budget Committee has reviewed your letter to Staff Director Ziegler, dated March 21, 2018, concerning the Parole Savings Fund. We understand that Department of Local Affairs (DOLA) asserts that while the General Assembly has not appropriated any money from the Parole Savings Fund, the General Assembly intended to authorize DOLA to spend \$1,761,140 from this fund in FY 2017-18 for the small business lending and grant programs that were created through H.B. 17-1326. In your letter you indicate that your Office agrees with DOLA, but you seek clarification from the Joint Budget Committee before providing the requested spending authority.

We appreciate your request for clarification. We do not agree with DOLA's assertion and your Office's interpretation that the General Assembly intended to allow spending authority from the Parole Savings Fund through H.B. 17-1326. House Bill 17-1326 created the Parole Savings Fund, which consists of money generated by savings anticipated to result from parole-related provisions in H.B. 17-1326 and appropriated to the Fund by the General Assembly. Pursuant to Section 24-32-120 (5), C.R.S., the Parole Savings Fund is subject to annual appropriation by the General Assembly, and the General Assembly may choose to appropriate money in the Fund to DOLA's Division of Local Government or to the Department of Corrections (emphasis added):

“(5) (a) The parole savings fund, referred to in this subsection (5) as the "fund", is hereby created in the state treasury. The fund consists of money generated by savings created in enacting House Bill 17-1326 and appropriated to the fund by the general assembly.

(b) The state treasurer shall credit all interest and income derived from the deposit and investment of money in the fund to the fund.

(c) The state treasurer shall transfer any unexpended and unencumbered money remaining in the fund at the end of a fiscal year to the general fund.

(d) Subject to annual appropriation by the general assembly, the division of local government may expend money from the fund to provide small business lending and grants aimed at reducing crime and promoting community development in the target communities of north Aurora and southeast Colorado Springs.

(e) Subject to annual appropriation by the general assembly, the department of corrections may expend money from the fund for external capacity if the anticipated reduction in the use of private prison beds from the parole changes enacted in House Bill 17-1326 are not achieved.”

As indicated in Section 24-32-120 (5)(c), C.R.S., absent an appropriation from the Parole Savings Fund, money that was appropriated to the Parole Savings Fund at the end of FY 2017-18 shall be transferred back to the General Fund.

The Committee was informed that \$1,761,140 General Fund had been appropriated to the Parole Savings Fund, and this amount was available for appropriation for FY 2017-18 to DOLA or to the Department of Corrections (DOC). While the Committee approved continuation of the \$4.0 million General Fund appropriations to DOLA for FY 2018-19 for small business lending and grant programs that were created through H.B. 17-1326, it did not take any action to appropriate money in the Parole Savings Fund to DOLA for these programs. In addition, while the Committee approved mid-year increases in General Fund appropriations to DOC for higher than anticipated external capacity expenses, the Committee chose not to appropriate money in the Parole Savings Fund to DOC for this purpose. The mid-year increase approved by the General Assembly exceeded the amount available in the Parole Savings Fund, and the \$1,761,140 that will be transferred from the Parole Savings Fund back to the General Fund at the end of FY 2017-18 will partially offset the mid-year increase in General Fund appropriations for external capacity.

If you have any questions or concerns, please contact Carolyn Kampman of our staff at 303-866-4959.

Sincerely,

Representative Millie Hamner, Chair  
Joint Budget Committee

cc:

Mr. John Ziegler, Staff Director, Joint Budget Committee  
Mr. Henry Sobanet, Director, Office of State Planning and Budgeting  
Mr. Irv Halter, Executive Director, Department of Local Affairs  
Mr. James McCoy, Finance Director, Department of Local Affairs