MEMORANDUM

JOINT BUDGET COMMITTEE

TO	Members of the Joint Budget Committee
FROM	Justin Brakke, JBC Staff (303-866-4958)
DATE	May 13, 2020
SUBJECT	Public Safety Staff Balancing-Additional Options & Comebacks

STAFF RECOMMENDATIONS

➔ REDUCE FUNDING R3 STATE RECOVERY SECTION

JBC ACTION AS OF 3/16/20: The Committee approved the staff recommended increase of $253,640 General Fund for 4.0 additional FTE for the State Recovery Section of the Office of Emergency Management in the Division of Homeland Security and Emergency Management.

OPTION: **Reduce funding for this decision item by $190,230 General Fund. This leaves $63,410 General Fund for 1.0 FTE.**

ANALYSIS:

Key Considerations: New FTE proposed for FY 2020-21.

The Governor's FY 2020-21 budget request sought an increase of $314,722 General Fund and 4.0 FTE for the State Recovery Section. These FTE would be responsible for planning and implementing pre- and post-disaster recovery requirements consistent with updates to the Colorado Disaster Emergency Act in 2018 ("the Act," H.B. 18-1394). The Department's request emphasized pre-disaster recovery planning assistance because 44 of Colorado's 64 counties do not have pre-disaster recovery plans.

OSPB has withdrawn its support for the requested FTE. Staff is recommending a reduction and not a full removal of the funding because the State Recovery Section is currently staffed by 1.0 FTE. Staff cannot justify 4.0 additional FTE given the current budget situation, but believes one additional FTE would be appropriate to share the load in the State Recovery Section.

RECOMMENDATIONS/OPTIONS FOR DEEPER CUTS

➔ TRANSFER SCHOOL SAFETY RESOURCE CENTER CASH FUND TO GENERAL FUND

JBC ACTION AS OF 5/5/2020: The JBC approved a staff recommendation to refinance General Fund appropriations for the School Safety Resource Center (SSRC) with cash funds from the SSRC Cash Fund.

OPTION: Transfer $1.0 million from the SSRC Cash Fund to the General Fund. Most of the money in the SSRC Cash Fund came from the General Fund.

ANALYSIS:
Key Considerations: Statutory change required.

After JBC action on May 5, 2020, the School Safety Resource Center is fully supported by cash funds from the SSRC Cash Fund. The Committee approved staff's recommendation to replace a $558,222 General Fund appropriation with cash funds from the SSRC Cash Fund.

Even after refinancing and a $1.0 million transfer, the fund balance is sufficient to support the SSRC through the end of FY 23. The following table shows what the balance of the fund looks like through FY 23.

SCHOOL SAFETY RESOURCE CENTER CASH FUND				
FUND BALANCE	FY 20	FY 21	FY 22	FY 23
Before refinancing	$3,560,722	$3,003,735	$2,430,788	$1,847,788
After refinancing	3,560,722	2,445,513	1,872,566	1,289,566
After refinancing and a $1.0 million transfer in FY 20	**2,560,722**	**1,445,513**	**872,566**	**289,566**

Additional Background:
There are no annual grant programs that rely on the SSRC Cash Fund, so no grant programs are slated to receive funding in FY 21.

A $1.15 million grant was distributed from the Fund in FY 20. According the Department, that money is gone and cannot be recouped. The grant was made possible by S.B. 19-179 (Enhance School Safety Incident Response Grant Program) and was distributed to the Jeffco Deangelis Foundation.

➔ REDUCE APPROPRIATIONS FOR COMMUNITY CORRECTIONS PLACEMENTS

JBC ACTION AS OF 3/16/20: The Committee approved an appropriation of $76,549,419 General Fund for the Community Corrections Placements line item in the Division of Criminal Justice. This was a $2.76 million increase from FY 2019-20.

RECOMMENDATION: **Reduce appropriations to the Community Corrections Placements line item by $4,491,800 General Fund**, which is equivalent to 254 standard residential beds. This recommendation accounts for capacity that was not added in FY 2019-20. If the Committee takes any action on appropriations for community corrections placements, staff requests permission to adjust the Long Bill footnote accordingly.

OPTION: **Reduce appropriations to the Community Corrections Placements line item by $7,073,700 General Fund in FY 2020-21**, which is equivalent to 400 standard residential beds. This is a scalable option that captures savings from reduced occupancy in the community corrections system due to COVID-19.

ANALYSIS:
Key Considerations: Reduces an increase in appropriations for FY 2019-20.

In FY 20, the Committee approved an increase of $3.9 million General Fund for a supplemental caseload adjustment requested by the Department. The request included $3.2 million to expand capacity in the system by an additional 254 standard residential beds.

Expansion did not occur as planned due to COVID 19. The Department has been utilizing that supplemental funding to cover sixty days of subsistence payments for all residential and non-residential community corrections client. As of May 6, that coverage has cost about $3,140,490 General Fund.[1] In other words, DCJ has used almost all of the supplemental funding it expected to allocate for the 254 additional beds for COVID 19-related expenses.

Option for Deeper Cuts: Reduce Appropriations for Reduced Occupancy

The single day census on May 11, 2020 showed 725 fewer occupied beds than the daily average from July 2019 to the end of February 2020. New placements have slowed or stopped entirely in some facilities to mitigate the spread of COVID 19.

It is JBC staff's view that placements are unlikely to rise to FY 20 levels. DCJ concurs with this assessment, though neither DCJ nor JBC staff can predict what occupancy will look like in FY 21. The pace and number of new placements will depend on social distancing expectations for community corrections facilities. Where measures are significantly relaxed or eliminated, placements may increase rapidly. Where social distancing requirements remain in place, the pace of new placements will likely be slow. The pace of new placements also depends on the pace of sentencing in the justice system and referrals from the corrections system.

The table below shows how the number of occupied beds has changed since the beginning of March. The Committee may consider capturing the savings from reduced occupancy now as part of its effort to balance the budget. If new placements increase rapidly and DCJ determines that caseload will exceed appropriations, the Committee can increase appropriations through supplemental action if funds are available. DCJ expressed discomfort with reductions by these amounts, especially for specialized services, where demand is usually high. JBC staff therefore recommends that the Committee consider further reductions in standard residential beds only.

BALANCING OPTION: REDUCED OCCUPANCY IN COMMUNITY CORRECTIONS SYSTEM					
PLACEMENT TYPE	RATE	FY 20 YTD ADP	CENSUS ON 05/11/20	DIFFERENCE	REDUCE APPROPRIATION BY DIFFERENCE
Standard residential	$48.45	2,885	2,212	(673)	($11,902,915)
Cognitive behavioral treatment pilot program	95.02	19	0	(19)	(669,022)
Intensive Residential Treatment	93.47	243	156	(87)	(2,958,587)
Inpatient Therapeutic Community	80.95	102	73	(29)	(868,970)
Residential Dual Diagnosis Treatment	82.64	121	97	(24)	(728,451)
Sex Offender	82.64	115	94	(21)	(640,675)
Standard Non-residential	6.56	792	927	135	323,076
Outpatient Therapeutic Community	23.52	59	53	(6)	(55,029)
Totals		**4,337**	**3,612**	**(725)**	**($17,500,572)**

[1] Executive Orders D 2020-016 and 043 authorized DCJ to cover subsistence payments; that authorization will end on May 23, 2020 unless renewed by the Governor.

➔ REDUCE PER-DIEM RATES FOR COMMUNITY CORRECTIONS PROVIDERS

JBC ACTION AS OF 3/16/20: None. With the exception of the rate for Inpatient Therapeutic Communities (ITC), rates did not change for FY 2020-21. During figure setting, the Committee approved a staff recommendation to increase the ITC rate by $5.19 for a total increase of $205,231 General Fund.

OPTION 1: **Reduce the per-diem rate for standard residential beds in community corrections by 6.0%, which would reduce appropriations by approximately $3.1 million General Fund.** This is a scalable option; the Committee may choose any percentage it deems appropriate. If the Committee takes any action on rates, staff requests permission to adjust the Long Bill footnote accordingly.

OPTION 2: **Reverse decision to increase the Inpatient Therapeutic Community per-diem rate by $5.19 for FY 2020-21, which would reduce appropriations by $205,231 General Fund.**

ANALYSIS:

Key Considerations: Reduces an increase in appropriations for FY 2019-20; no immediate health, life, or safety impact.

In the 2019 legislative session, the JBC approved an increase of $6,722,909 General Fund to support an increase in provider rates for FY 2019-20. A 12.4 percent increase in the standard residential rate ($43.11 to $48.45) accounted for about $5.8 million of the $6.7 million overall increase.

If the rate was reduced by 6.0 percent for FY 2020-21, it would reduce the State's General Fund obligation by about $3.1 million. Savings will be lower if the number of appropriated beds is reduced. The table below shows various scenarios if the Committee were to reduce the rate by a different percentage.

OPTIONS TO REDUCE PER-DIEM RATE FOR STANDARD RESIDENTIAL BEDS

REDUCTION SCENARIOS	NEW RATE	DIFFERENCE ($) FROM 2018-19 RATE	APPROPRIATED AMOUNT	IMPACT ON GENERAL FUND APPROPRIATIONS FOR FY 2020-21
No reduction	$48.45	$5.34	$51,844,574	$0
1.0%	47.97	4.86	51,326,128	(518,446)
2.0%	47.48	4.37	50,807,682	(1,036,891)
3.0%	47.00	3.89	50,289,236	(1,555,337)
4.0%	46.51	3.40	49,770,791	(2,073,783)
5.0%	46.03	2.92	49,252,345	(2,592,229)
6.0%	45.54	2.43	48,733,899	(3,110,674)

The rate was reduced by 6.0 percent, the rate would still be $2.43 (5.6 percent) higher than FY 19. When adjusting for inflation, the rate would still be 3.3 percent higher than FY 19. However, the rate would show a 2.2 percent real *decrease* since FY 16. The table on the following page shows the percentage change in rates following a 6.0 percent reduction.

6.0 PERCENT REDUCTION, STANDARD RESIDENTIAL PER-DIEM RATE (INFLATION-ADJUSTED, CONSTANT 2020 DOLLARS)	
YEAR	INCREASE/(DECREASE)
FY 15-16 to 19-20	4.0%
FY 15-16 to 20-21	(2.2%)
FY 18-19 to 19-20	9.9%
FY 18-19 to 20-21	3.3%

Impact of a Rate Reduction

Prior JBC staff analysis suggests that current provider rates do not cover costs reported by those providers. However, that analysis could not determine whether current rates (or in this case, reduced rates) would eventually lead to closures or an inability to provide required services/treatments, or whether these things would measurably impact public safety.

➔ SUSPEND OR REDUCE TRANSFER TO SCHOOL ACCESS FOR EMERGENCY RESPONSE CASH FUND

JBC ACTION AS OF 5/5/20: None.

OPTION: Suspend or reduce the $5.0 million annual transfer from State Public School Fund to School Access for Emergency Response Cash Fund. **This requires a statutory change.** Suspending this transfer effectively suspends the School Access for Emergency Response Grant Program. Based on the demand for these grants and legitimate use cases, staff would classify this as a "cut last" option.

ANALYSIS:

Senate Bill 18-158 (School Access to Interoperable Communication Technology) created the School Access for Emergency Response (SAFER) Grant Program and the SAFER Cash Fund. The grant program provides funding to schools to increase their ability to community with first responders. Specifically, it supports the purchase, installation, and training for interoperable communications systems.

The grant program is administered by the Division of Homeland Security and Emergency Management's Office of Preparedness. Cash fund spending authority for the program is located in the Program Administration line item for the Office of Preparedness.

STATUTORY TRANSFER

Section 24-33.5-2107 (1)(b), C.R.S. directs the state treasurer to transfer $5.0 million to the SAFER Cash Fund from the State Public School Fund on July 1 every year through 2023. The Department of Public Safety is authorized to use up to 3.0 percent of those funds to administer the program. The program is supported by 2.5 FTE.

DEMAND FOR SAFER GRANTS

On May 11, 2020, DHSEM received $9.9 million in applications for SAFER grants from about 30 schools and school districts. Awardees for FY 21 be notified in June 2020. Demand was also high in FY 20, as DHSEM granted out $4.86 million to eight applicants.

USE CASES
Two hundred twenty seven (227) schools in 20 school districts have implemented new communication technology as a result of this grant. According to the Department, more than 1,000 emergency communications have occurred. Staff has not confirmed that each of these communications was truly an emergency. However, staff did receive a handful of detailed use cases that affirm the use of grant-enabled communications technology in legitimate emergencies.

PRIOR AWARDEES COULD BE IMPACTED
According to the Department, "Some of the applications funded by rounds 1 and 2 represented phased rollouts of interoperability systems. A loss of future funding would leave those School Districts with different tech and capabilities in different schools, adding to confusion in an emergency, and possibly resulting in the abandonment of the systems."

➔ APPROPRIATION TO 2013 FLOOD RECOVERY ACCOUNT

JBC ACTION AS OF 5/5/20: The Committee voted to remove funding for the Department's FY 2020-21 request. The Department requested $9,167,041 General Fund for the 2013 Flood Recovery Account (the Account) in FY 2020-21.

RECOMMENDATION: **Staff recommends a total appropriation of $3,657,723 General Fund for FY 2020-21.** This recommendation aims to provide sufficient funds for ongoing projects.

ANALYSIS:
The Department's request for $9.1 million General Fund is the final installment of a four-year annual appropriation. As OSPB noted in its May 11 comebacks, H.B. 17-261 established the 2013 Flood Recovery subaccount within the Disaster Emergency Fund and transferred $12.5 million General Fund into that subaccount. (Section 24-33.5-706 (2.5), C.R.S.)

In the 2018 legislative session, the JBC approved the Department's request for an annual appropriation into the Account from FY 19 to FY 21. Between H.B. 17-261 and the Department's budget request, a total of $36.0 million General Fund has been appropriated into the Account. Of that $36.0 million, $19.9 million has been expended.

THE 2013 FLOOD RECOVERY ACCOUNT DID NOT FORMALLY EXIST UNTIL APRIL 14, 2020
It has been difficult for JBC staff to acquire timely and consistent information about the balance of the Account and planned expenditures from the Account. It is staff's view that this difficulty may be partially explained by the fact that the Account did not formally exist until April 14, 2020.

Per the Office of the State Controller, there was never a separate account actually established. Instead, the activity was managed by specific program coding within the Disaster Emergency Fund. On April 13, a request was made to establish a separate fund where these expenditures would be captured as originally envisioned. That was set up on April 14.

ACCOUNT BALANCE AND REMAINING EXPENSES/ENCUMBRANCES

The Department says it has expended $19.9 million of the $36.0 million appropriated to the Account. This leaves a de facto balance of $16.1 million.[2]

The Department expects approximately $30.0 million in remaining expenses related to the 2013 flood recovery projects; those projects could last until December 2024. The $30.0 million figure includes: $19.0 million for ongoing projects; $7.0 million in potential funding for projects in Boulder County that were denied funding by FEMA, but are under appeal; and $4.0 million in administrative expenses if projects last through December 2024.

LEGAL RISKS AND ANNUAL LONG BILL APPROPRIATIONS

Regarding OSPB's May 11 comeback, staff agrees that the State is obligated to provide at least 50.0 percent of the 25.0 percent local match for FEMA Public Assistance grant funding (4145-DR-CO) for the 2013 floods, or 12.5 percent of the overall cost of each project. Staff also agrees that FEMA has broad authority to punish the State for failure to meet its obligations.

However, staff disagrees with the implication that all FEMA Public Assistance funding is at risk as a direct result of the Committee's decision to eliminate this annual appropriation. There is nothing in the FEMA-State Agreement for the 2013 floods that dictates *how* the obligation is met. There are other means to meet this obligation besides General Fund appropriations, such as Executive transfers into the Disaster Emergency Fund. That option may not be ideal, but that is how flood recovery was funded prior to the establishment of this Long Bill appropriation, which was requested by the Department through the annual budget process during the 2018 Session. That budget request did not mention legal risks if the request was denied.

RECOMMENDATION

Staff cannot fully justify the need for the requested $9.1 million appropriation in FY 21. First, it is not clear that the full $9.1 million is necessary for potential expenditures in FY 21. Second, it is not strictly necessary for the State to meet its flood recovery obligations through General Fund appropriations in the Long Bill. Rather than a full reinstatement of the Department's request, staff recommends an appropriation of $3,657,723 based on the calculations in the following table.

STAFF CALCULATIONS RECOMMENDED APPROPRIATION TO THE 2013 FLOOD RECOVERY ACCOUNT	
CASH FLOW	AMOUNTS
Appropriations to account from FY 18 to FY 20	$36,000,000
Expenditures to-date	19,900,000
Current balance	**$16,100,000**
State share anticipated costs of ongoing projects (total encumbrances)	(18,868,835)
Administrative expenses in FY 21	(888,888)
Total expenses FY 21	**($19,757,723)**
Possible shortfall in FY 21 (Current balance less possible expenses)	(3,657,723)
Recommended appropriation	**$3,657,723**

[2] There is a difference between the Department's numbers and OSC's numbers. OSC says the unused balance of the (newly created) Account is $9.1 million. OSC indicated that the $19.0 million encumbered for ongoing projects would be paid for out of both the Disaster Emergency Fund and the Flood Recovery subaccount.

This recommendation aims to provide sufficient funds for all ongoing projects and administrative payroll for one year. Staff excluded possible expenditures related to Boulder County's FEMA appeal because the outcome has not been decided. If the outcome is decided in FY 21, the Department may submit a supplemental budget request or seek alternative funding. Staff calculated one year of administrative expenses based on the Department's estimate of $4.0 million through December 2024.