

EMERGENCY SUPPLEMENTAL REQUEST for FY 2007-08 BUDGET

Department:	Department of Public Safety
Priority Number:	
Change Request Title:	Public Schools Inspections

SELECT ONE (click on box):

- Decision Item FY 08-09
- Base Reduction Item FY 08-09
- Supplemental Request FY 07-08
- Budget Request Amendment FY 08-09

SELECT ONE (click on box):

- Supplemental or Budget Request Amendment Criterion:
- Not a Supplemental or Budget Request Amendment
 - An emergency
 - A technical error which has a substantial effect on the operation of the program
 - New data resulting in substantial changes in funding needs
 - Unforeseen contingency such as a significant workload change

Short Summary of Request:

This Emergency Supplemental request is for \$78,312 in spending authority from the Public Safety Inspection Fund, created in CRS 8-1-151, for two contracted fire inspectors and associated costs for the public school inspection program. The program is run in coordination with the Division of Oil and Public Safety. This request will help address inspection related issues revealed in the public school inspection program portion of the Performance Audit released June 11, 2007 by the State Auditor's Office. The Division of Fire Safety will continue working with the Division of Oil and Public Safety to develop a long-term strategy to ensure the school inspection program's success and to determine appropriate resource needs.

Background and Appropriation History:

Statutory Background

In Colorado, the construction of residential and commercial buildings is overseen and regulated by local government building and fire departments. However, construction of K-12 public schools and junior colleges is regulated by the Division of Oil and Public Safety (DOPS) and the Division of Fire Safety (Division). Public school construction

projects include building new schools or additions to existing schools, remodeling or renovating existing schools, and placing modular (prefabricated) classrooms on-site. In addition to construction projects, the Division is also responsible for ensuring that public school and junior college buildings continue to meet the requirements of the Fire Code on a continuing basis.

Under HB06-1158, the Division of Fire Safety is charged with ensuring that fire and life safety inspections of public schools and junior colleges are performed, both during construction and on a regular basis.

HB06-1158 established a system where construction plan review and inspection can be delegated to local authorities, only if the local school district or junior college requests the assistance of the local jurisdiction. HB06-1158 also allows local jurisdictions to conduct regular fire inspections of public schools and junior colleges, with or without the school's consent. However, local jurisdictions cannot conduct any plan reviews, construction inspections or regular inspections without being qualified. HB06-1158 mandates a certification program, which is administered by the Division, to establish qualified inspectors. In addition, HB06-1158 does not allow the state to compel a local jurisdiction to conduct plan reviews or inspections.

Given the mandates and limitations codified by HB06-1158, there are several circumstances where the Division is required to conduct the necessary plan reviews, construction inspections and regular inspections of Colorado's public schools and junior colleges. These circumstances include:

- The local jurisdiction is qualified to do construction plan reviews and inspections but the school district or junior college opts not to have the local jurisdiction conduct them
- The local jurisdiction is not qualified to do construction plan reviews and/or inspections

- The local jurisdiction is qualified to do construction plan review and inspections and the school district asks the local jurisdiction to do them, but local jurisdiction chooses not to do them due to resource limitations
- The local jurisdiction is not qualified to do regular inspections; or, the local jurisdiction is qualified to do regular inspections, but chooses not to

Scope

On a given school-day, there are approximately 794,000 children and 55,000 teachers and administrators occupying Colorado public school buildings.

There are approximately 300 public school and junior college construction projects annually. Of these, 50 are considered major projects that require additional oversight. Once construction is complete and a certificate of occupancy is issued, the school building needs to be inspected on a regular basis, usually annually, to ensure that compliance with the Fire Code is maintained.

There are 1,771 public schools and charter schools in 179 school districts. Many of these schools have campuses with multiple buildings that need inspections. In addition, the state's junior colleges may have multiple campuses, e.g., Colorado Mountain College with 13 campuses, which adds to the number of buildings that must be inspected.

In order to maximize the number of inspectors and plan reviewers available for school construction projects and regular inspections, and ensure that all inspectors are qualified for the types of inspections they are doing, the Division has four different fire inspector certification levels: one for maintenance (annual inspections), one for fire suppression systems, one for construction inspections and one for conducting plan reviews. Each of these certifications require a test and, for the higher levels, demonstrated experience.

Currently there are only four certified inspectors and four certified inspector and plan reviewers for schools in the state. Six of the eight are from one fire district. The Division

published emergency rules to certify more inspectors and is actively working with local jurisdictions to encourage them to participate in the program. The Division anticipates that it will receive and approve approximately 200 applications for various inspector certifications before the end of the fiscal year. Most of those inspectors will be in jurisdictions that already have mature fire inspection programs. Very few of smaller, primarily volunteer fire departments, will have personnel with the requisite knowledge and experience to become certified inspectors.

Problems

The Office of the State Auditor conducted a performance audit on the DOPS and their final report was released on June 11, 2007. The report found several deficiencies within the public school program, which need to be addressed immediately in order to ensure the safety of the state's public schools and junior colleges.

The performance audit focused on building plan reviews, approved building plans, required inspections, code violations, documentation, resources, and fee collection. The audit review determined that the DOPS is not sufficiently protecting the safety of students and staff in schools. The audit identified weaknesses in all areas – from initial plan review through final building inspection. The audit revealed insufficient resources and expertise in the DOPS's oversight responsibilities.

The performance audit looked at DOPS prior to the implementation of HB06-1158. Therefore, many of the problems identified in the performance audit are now shared by the Division. Examples of problems identified in the performance audit that affect the Division include:

- The plans for one middle school incorrectly approved a basement as a crawl space. If the area was appropriately classified, the Code required that the area have an automatic sprinkler system and that the heating and air ducts be contained in a one-hour fire-rated shaft to prevent the spread of fire. If a fire were to start in the area, it would spread quickly to the rest of the building and could cause serious injuries or fatalities.

- A school administration building had an occupancy load calculation for the entire building that was erroneously low; as a result, the building was built without the required automatic fire sprinkler system.
- The plans for a middle school were approved even though a fire wall did not have the required bracing and connections to ensure it would not collapse if a fire were to occur.
- The plans for an elementary school included an occupancy load calculation for two kindergarten classrooms that was erroneously low – each room had only one exit. If the correct calculation had been used, each room would have two exits.

Without proper plan reviews and construction inspections, these types of problems will continue to occur.

Appropriation History

For the fiscal year beginning 1 July 2006, \$49,020 was appropriated from the Public Safety Inspection Fund created in CRS 8-1-151 and \$6,625 was appropriated from the Firefighter and First Responder Certification Fund established in CRS 24-33.5-1207. A similar amount was appropriated for fiscal year beginning 1 July 2007. This level of funding, pays for a portion (approximately 50 percent) of the Division's fire protection engineer.

Under current resource conditions, less than one percent of regular fire inspections, less than 50 percent of plan reviews and less than 18 percent of construction inspections are being completed as required by statute.

General Description of Request:

This Emergency Supplemental request is for \$78,312 in spending authority from the Public Safety Inspection Fund, created in CRS 8-1-151, for two full-time contracted fire inspectors for the public school inspection program. This request will help address inspection-related issues revealed in the public school inspection program portion of the Performance Audit released in June 2007 by the State Auditor's Office.

Currently, the Division does not have any fire inspectors assigned to the public school inspection program. The new inspectors, along with the Division's existing Fire Protection Engineer, will allow the Division to assist the DOPS to first re-inspect a number (only those projects that require fire inspections) of the 150 schools identified in the Performance Audit and deal with the backlog of 112 existing projects, as the new school-year begins.

This request will immediately address problems identified in the Performance Audit and the backlog of projects at the DOPS by allowing DFS to hire two full-time contractors to perform plan reviews and school inspections for a six-month period, beginning in September 2007.

Independent of this request, the Division will continue to work with DOPS to develop a strategy for ensuring the long-term success of the school inspection program. As the state's resources are limited and there is a practical limit to what the Division can do on its own, the success of the program will rely on active participation by local jurisdictions. The key to the long-term success of the program will be the Division's ability to encourage local jurisdictions to become certified to conduct inspections and to encourage schools to meet with qualified local jurisdictions and develop delegation agreements.

Consequences if Not Funded:

The Division is committed to ensuring that schools are safe prior to being occupied. Therefore, certificates of occupancy for school construction projects may be delayed or curtailed due to the inability to complete necessary plan reviews and inspections for school construction projects. The delays may displace students from the school that they were supposed to attend, causing overcrowding and busing issues for some school districts.

STATE OF COLORADO FY 2007-08 BUDGET REQUEST: DEPARTMENT OF PUBLIC SAFETY

Calculations for Request:

Summary of Request FY 07-08	Total Funds	General Fund	Cash Funds	Cash Funds Exempt	Federal Funds	FTE
Total Request	\$78,312			\$78,312		
Personal Services (Contract Services)	\$78,312			\$78,312		

FY 08-09 information is not included in this 1331 Supplemental Request.

Assumptions for Calculations:

The Division anticipates that it will require two full-time contractors for six months to address the issues identified in the June 2007 performance audit. As highlighted in the table below, this assumption is predicated on the fact that the Division will be required to participate in as many as 150 re-inspections in cooperation with DOPS, and will perform new inspections on 112 separate construction projects.

Funds requested are Cash Funds Exempt (CFE) to CDPS, to be transferred from the Department of Labor and Employment, out of the Public Safety Inspection Fund (CRS 8-1-151).

It is further anticipated that the total monthly cost for one contractor will be \$6,526. This cost includes charges for the contractor's time, travel, lodging, and infrastructure needs.

STATE OF COLORADO FY 2007-08 BUDGET REQUEST: DEPARTMENT OF PUBLIC SAFETY

Number of Public Schools Junior College Buildings Subject to Inspection	1800	Number of Re-Inspections to be Performed	150	Number of Re-Inspections Delegated	0	Number of Re-Inspections Conducted by the Division	150
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Existing Construction Projects	Number of Projects	Number of Construction Inspections Per Project	Number of Inspections	Number of Inspections Delegated	Number of Inspections Conducted by the Division	Number of Construction Meetings Attended by the Division Proposed Inspectors
Medium Projects	37	2	74	0	74	7
Small Projects	56	0.5	28	0	28	6
Major Projects	19	4	76	0	76	5
Total	112	N/A	290	0	290	18

Total Inspections (Maintenance and Construction)	440
Average Time per Inspection, Including Travel (hours)	4.5
Average Time for Construction Meetings, Including Travel (hours)	2
Time Required for Inspections	1,980
Time Required for Construction Meetings	36
Total Contract Inspector Time	2,016
Number of Contractor Months Worked (170 Hours per Month)	12
TOTAL NUMBER OF CONTRACTORS FOR SIX MONTHS	2.0

Impact on Other Government Agencies: The Division has been cooperating and coordinating on this request with the DOPS in the Department of Labor and Employment. The request impacts DOPS in that school

construction projects need approval from the Division, or a delegated fire department, before DOPS can issue a certificate of occupancy to a school.

The request also impacts DOPS because it is funded by fees through the Public Safety Inspection Fund created in CRS 8-1-151, which DOPS establishes through rulemaking.

Cost Benefit Analysis:

In Colorado there is an average of 235 fires in educational occupancies annually. Like most fires, those in educational occupancies are largely preventable through increased supervision, fire prevention inspections, and fire safety education programs. For those fires that cannot be prevented, compliance with the Fire Code helps ensure that children, adult students, faculty and staff can be safely evacuated from the structure during an emergency. Compliance with the Fire Code also mitigates the effects of those fires that cannot be prevented.

The short-term benefits of this request is that the Division will be better able to assist the DOPS to re-inspect those schools identified in the Performance Audit and deal with their backlog of current construction projects. This will help prevent delayed openings of schools and the subsequent displacement of students.

Implementation Schedule:

	Task	Month/Year
Rules Written		July 2007
Rules Passed		August 2007
Contractors Hired		September 2007
Start-Up Date		September 2007

Statutory and Federal Authority:

Relevant Public School Construction Statute

22-32-124. *Building codes - zoning - planning - definitions.*

(1) "All buildings and structures shall be constructed in conformity with the building and fire codes adopted by the director of the division of oil and public safety in the department of labor and employment. . . ."

(2) (a) (I) The division shall conduct the necessary plan reviews and inspections to assure that a building or structure constructed pursuant to subsection (1) or (1.5) of this section has been constructed in conformity with the building and fire codes adopted by the director of the division; except that, at the request of the affected board of education, the state charter school institute created in section 22-30.5-503, or the charter school, the division may delegate this responsibility to the appropriate building department of a county, town, city, or city and county or to the appropriate fire department, as defined in section 24-33.5-1202, C.R.S., in the location of the building or structure.

(II) The division shall cause copies of the building plans to be sent to the appropriate fire department for review of fire safety issues. The fire department shall review the building plans, determine whether the building or structure is in compliance with the fire code adopted by the director of the division, and respond to the division within ten business days; except that the fire department may request an extension of this time from the director of the division on the basis of the complexity of the building plans.

(III) If the fire department declines to perform the plan review or any subsequent inspection, or if no certified fire inspector is available, the division of fire safety in the office of preparedness, security, and fire safety in the department of public safety shall perform the plan review or inspection. As used in this section, unless the context otherwise requires, "certified fire inspector" has the same meaning as set forth in section 24-33.5-1202 (2.5), C.R.S.

(IV) If the building or structure is in conformity with the building and fire codes and standards adopted by the director of the division, and if [sic] the affected fire department shall issue the necessary certificate of occupancy prior to use of the building or structure

by the school district or by the institute charter school. A fee may be charged for such plan reviews and inspections upon approval of the division. The amount of the fee shall be determined by the division by rule on the basis of the direct cost of providing the service.

(V) If the division, after consulting with the affected board of education or the state charter school institute, authorizes plan reviews and inspections by the building department and fire department, the plan reviews and inspections shall be in lieu of any plan reviews and inspections made by the division; except that this subsection (2) shall not be construed to relieve the division of the responsibility to ensure that the plan reviews and inspections are conducted if the appropriate county, town, city, or city and county building department or the appropriate fire department does not conduct the inspections. Nothing in this subsection (2) shall be construed to require a county, town, city, city and county, or fire department to conduct plan reviews and inspections.

(b) If the division conducts the necessary inspection to determine that a building or structure constructed pursuant to subsection (1) or (1.5) of this section has been constructed in conformity with the building and fire codes adopted by the director of the division, the division shall charge a fee not to exceed two hundred dollars for such inspection. The division shall charge a fee for plan review and issuance of a construction permit in an amount established by the division by rule to cover the actual, reasonable, and necessary expenses of the division. The director of the division by rule or as otherwise provided by law may reduce the amount of the fee if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund. After the uncommitted reserves of the fund are sufficiently reduced, the director of the division by rule or as otherwise provided by law may increase the amount of the fee as provided in section 24-75-402 (4), C.R.S. Any fees collected by the division pursuant to this paragraph (b) shall be transmitted to the state treasurer, who shall credit the same to the public safety inspection fund created pursuant to section 8-1-151, C.R.S.

(c) Inspectors for plan review and construction inspections shall be certified by the international code council, the national fire protection association, or another similar

national organization or have equivalent qualifications, as determined by rule promulgated by the director of the division.

(3) The fire department providing fire protection service for the buildings and structures of a school district, an institute charter school, or a charter school or the division of fire safety in the office of preparedness, security, and fire safety in the department of public safety may inspect the buildings and structures when deemed necessary to assure that they are maintained in accordance with the fire code and standards adopted by the director of the division. If the local fire department does not perform the inspections authorized by this subsection (3), the division shall have the authority and duty to conduct the inspections.

Relevant Junior College Statute

23-71-122. Junior college board of trustees - specific powers.

(1) In addition to any other power granted by law to a board of trustees of a junior college district, each board shall have the power to:

(v) (I) ... "All buildings and structures shall be constructed in conformity with the building and fire codes adopted by the director of the division of oil and public safety in the department of labor and employment, ..."

(II) (A) The division shall conduct the necessary plan reviews and inspections to determine that a building or structure constructed pursuant to subparagraph (I) of this paragraph (v) has been constructed in conformity with the building and fire codes and standards adopted by the director of the division; except that the division may delegate this responsibility to the appropriate building department of a county, town, city, or city and county or to the appropriate fire department, as defined in section 24-33.5-1202, C.R.S., in the location of the building or structure.

(B) The division shall cause copies of the building plans to be sent to the appropriate fire department for review of fire safety issues. The fire department shall review the building plans, determine whether the building or structure is in compliance with the fire code

adopted by the director of the division, and respond to the division within ten business days; except that the fire department may request an extension of this time from the director of the division on the basis of the complexity of the building plans.

(C) If the fire department declines to perform the plan review or any subsequent inspection, or if no certified fire inspector is available, the division of fire safety in the office of preparedness, security, and fire safety in the department of public safety shall perform the plan review or inspection. As used in this section, unless the context otherwise requires, "certified fire inspector" has the same meaning as set forth in section 24-33.5-1202 (2.5), C.R.S.

(D) If the building or structure is in conformity with the building and fire codes and standards adopted by the director of the division, and if the affected fire department certifies that the building or structure is in compliance with the fire code adopted by the director of the division, the division or the building department shall issue the necessary certificate of occupancy prior to use of the building or structure by the junior college district. A fee may be charged for the plan reviews and inspections upon approval of the division. The amount of the fee shall be determined by the division by rule on the basis of the direct cost of providing the service.

(E) If the division, after consulting with the affected junior college board, authorizes plan reviews and inspections by the building department or fire department, the plan reviews and inspections shall be in lieu of any plan reviews and inspections made by the division; except that this subparagraph (II) shall not be construed to relieve the division of the responsibility to ensure that the plan reviews and inspections are conducted if the appropriate county, town, city, or city and county building department or the appropriate fire department does not conduct the plan reviews and inspections. Nothing in this paragraph (v) shall be construed to require a county, town, city, city and county, or fire department to conduct plan reviews and inspections.

(III) The fire department providing fire protection service for the buildings and structures of a junior college district or the division of fire safety in the office of preparedness,

security, and fire safety in the department of public safety may inspect the buildings and structures when deemed necessary to assure that they are maintained in accordance with the fire code and standards adopted by the director of the division. If the local fire department does not perform the inspections authorized by this section, the division shall have the authority and duty to conduct the inspections.

(IV) Inspectors for plan review and construction inspections shall be certified by the international code council, the national fire protection association, or another similar national organization or have equivalent qualifications, as determined by rule promulgated by the director of the division.

(VII) If the division conducts the necessary plan reviews and inspections to determine that a building or structure constructed pursuant to subparagraph (II) of this paragraph (v) has been constructed in conformity with the building and fire codes and standards adopted by the director of the division, it shall charge a fee not to exceed two hundred dollars for such inspection. The division shall charge a fee for plan review and issuance of a construction permit in an amount established by the division by rule to cover the actual, reasonable, and necessary expenses of the division. Fees collected by the division pursuant to this subparagraph (VII) shall be transmitted to the state treasurer, who shall credit the same to the public safety inspection fund created pursuant to section 8-1-151, C.R.S. The director of the division by rule or as otherwise provided by law may reduce the amount of the fee if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund. After the uncommitted reserves of the fund are sufficiently reduced, the director of the division by rule or as otherwise provided by law may increase the amount of the fee as provided in section 24-75-402 (4), C.R.S. The rules authorized by this paragraph (v) shall be promulgated in accordance with article 4 of title 24, C.R.S.

Relevant Division of Fire Safety Statutes

24-33.5-1202. Definitions.

As used in this part 12, unless the context otherwise requires:

(2.5) "Certified fire inspector" means a person with fire safety plan review or inspection responsibilities who is employed by or volunteers services to the state or a governing body as a fire inspector and who is certified by the division to conduct fire safety plan reviews and inspections pursuant to section 24-33.5-1211.

(3.5) "Fire department" means the duly authorized fire protection organization of a town, city, county, or city and county, a fire protection district, or a metropolitan district or county improvement district that provides fire protection.

24-33.5-1203. Duties of the division.

(1) The division shall perform the following duties:

(p) Conduct construction plan reviews and inspect public school and junior college buildings and structures in accordance with sections 22-32-124 (2) (a) and 23-71-122 (1) (v) (II), C.R.S.

24-33.5-1211. Inspector certification.

(1) The division shall certify a person with fire safety responsibilities who is employed by, under contract to, or volunteers services to the state or a governing body as a fire inspector if the person files an application with the division for certification on forms provided by the division, pays the required certification fee, is at least eighteen years of age, and:

(a) Passes the fire code certification examination as prescribed by the director of the division; or

(b) Holds a valid and current fire code certification from the international code council; or

(c) Demonstrates to the director of the division that the person meets other equivalent qualifications, including, but not limited to, the education and experience prescribed by rules adopted by the director of the division in accordance with article 4 of this title and obtains an attestation on a form provided by the division from the head of the governing body or a designee that the person has the knowledge, skills, and ability to conduct fire safety plan reviews and inspections using the rules and codes adopted pursuant to sections 8-1-107 (2) (p) and 24-33.5-1203.5 (2) (b), C.R.S.

Public Safety Fund Statute

8-1-151. Public safety inspection fund created.

There is hereby created in the state treasury a fund to be known as the public safety inspection fund, which shall consist of moneys credited thereto pursuant to section 8-20-101 (3) and sections 9-7-108.5 and 22-32-124 (2), C.R.S. All moneys in the public safety inspection fund shall be subject to annual appropriation by the general assembly for the public safety inspection activities of the division of oil and public safety. The moneys in the public safety inspection fund shall not be credited or transferred to the general fund or any other fund of the state.

Performance Measures:

Performance measures for this request are in accordance with Objective 1.33, submitted as part of the Department's FY 2007-08 budget request: *"Increase the level of fire and life safety in K-12 schools and junior colleges by requiring that plans for new and remodeled schools are examined for fire safety issues, that fire safety inspections are conducted during construction, that fire safety issues are addressed prior to occupancy, that schools are maintained in accordance with adopted fire codes and standards, and that persons conducting plan reviews and inspections for fire safety issues are qualified and certified."*

As this is a new program, the Division needs to establish baselines prior to establishing a outcome-based performance measures.