

DATE: June 10, 2015

AGENDA ITEM: D

TO: BSCC Chair and Members

FROM: Patricia Pechtel, General Counsel, pat.pechtel@bscc.ca.gov

SUBJECT: Senate Bill 81 (Local Youthful Offender Rehabilitative Facilities Construction Financing Program), Round 2: **Requesting Approval for Supplemental Statement of Reasons and Filing of the Final Rulemaking Package.**

Summary

This agenda item seeks Board approval of revisions to the Senate Bill (SB) 81 Title 15, California Code of Regulations (CCR) (Attachment D-1), and permission to submit the Supplemental Statement of Reasons (Attachment D-2) and Final Rulemaking Package to the Office of Administrative Law (OAL). This filing will ensure that the emergency regulations currently in place do not become automatically repealed, and that construction financing timelines for local youthful offender rehabilitative facilities remain intact.

SB 81 (Chapter 175, Statutes of 2007) authorized state lease-revenue bond financing for the acquisition, design, renovation, or construction of local youthful offender rehabilitative facilities.

SB 81 and its amendments require that local youthful offender rehabilitative facility projects must be established with the State Public Works Board (SPWB) before June 30, 2017. Thirteen local youthful offender rehabilitative projects were conditionally awarded financing through SB 81 Round One; two have been completed, and the remaining projects are in various stages of SPWB financing. The remaining \$79.2M in financing was conditionally awarded through SB 81 Round Two at the April 9, 2015 BSCC Board Meeting.

In order to continue with local youthful offender rehabilitative facility projects in a timely manner, it is necessary to update the Title 15 regulations. If the Board does not approve the updated regulations at this June 10, 2015 meeting, there could be delays in the financing process, causing significant unanticipated costs, and the emergency regulations currently in effect would automatically repeal.

Background

SB 81 authorized \$100M in state lease-revenue bond financing for the acquisition, design, renovation, or construction of local youthful offender rehabilitative facilities. Assembly Bill 1628 (Chapter 729, Statutes of 2010) added \$200 million in financing. Conditional awards for SB 81 Round One were made to 13 counties; two projects have been completed and several are actively being financed through the SPWB process.

The remaining \$79.2M in financing from SB 81 was conditionally awarded to eight counties at the April 9, 2015 BSCC Board Meeting.

On July 10, 2014 the BSCC Board approved the proposed SB 81 Round Two regulations text. An Emergency Rulemaking Action was submitted to OAL on August 4, 2014, followed by a Publication of Notice on October 16, 2014, and a Certificate of Compliance on February 3, 2015.

During its required review, OAL discovered several inconsistencies between the regulation text and the language of the SB 863 Request for Proposal (RFP). BSCC staff withdrew the Certificate of Compliance on March 3, 2015 and immediately filed an Emergency Rulemaking Readopt package on March 6, 2015, to temporarily save the regulations from repeal.

To maintain consistency with the enabling legislation and the SB 81 ESC's decisions and project schedules, the original Title 15 CCR SB 81 regulations must be updated.

Since March 6, 2015, BSCC staff and OAL have cooperatively worked to ensure there are no inconsistencies between the regulation text and other SB 81 documents. On May 21, 2015, BSCC posted the required 15-day Notice of Modifications to the Text of Proposed Regulations and Addition of Document to the Rulemaking File (Attachment D-1) on its website, and provided notice to those who have requested notice. The Supplement to the Initial Statement of Reasons (Attachment D-2), which complies with the Administrative Procedure Act and OAL regulations that require explanation for each modification made to the regulation text, was part of this posting. OAL pre-reviewed all of these documents, and had no objections

The modified regulations and the supplement will also be included in the Certificate of Compliance Rulemaking (Final Rulemaking) package, which staff will submit to OAL after this June 10, 2015 Board meeting.

Recommendation/Action Needed

Staff recommends:

1. The Board approve the draft adoptions and amendments to the SB 81 regulations (Attachment D-1).
2. The Board approve the Supplement to Initial Statement of Reasons (Attachment D-2).
3. The Board approve the filing of an Emergency Rulemaking Readopt with the Office of Administrative Law, if such action becomes necessary due to unforeseen complications in the rulemaking process.
4. The Board approve the filing of a Certificate of Compliance Rulemaking Action with the Office of Administrative Law after the June 10, 2015 Board meeting.

Attachments

- D-1: Modifications to Title 15, Division 1, Chapter 1, Subchapter 7, Local Youthful Offender Rehabilitative Facility Construction Financing Program Minimum Standards Regulations
- D-2: Supplement to Initial Statement of Reasons