

DATE: June 10, 2015 **AGENDA ITEM: E**

TO: BSCC Chair and Members

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

SUBJECT: Senate Bill 863 (Adult Local Criminal Justice Facilities Construction Financing Program): Request for Refiling of Emergency Rulemaking Package, Amendments to Title 15: **Requesting Approval.**

Summary

In this item, staff seeks Board approval to re-file its Emergency Rulemaking package with the Office of Administrative Law, including amendments to Title 15.

On June 20, 2014, Senate Bill 863 (SB 863) (Chapter 37, Statutes of 2014) became law, authorizing \$500 million in state lease-revenue bond financing for the acquisition, design, and construction of adult local criminal justice facilities. The Board of State and Community Corrections (BSCC) staff worked with the SB 863 Executive Steering Committee (ESC) and revised the Title 15 Construction Financing Program regulations to comply with the law.

Staff submitted an emergency rulemaking action to the Office of Administrative Law (OAL) shortly after the text was approved by the BSCC Board at the April 9, 2015 Board meeting. The OAL determined that BSCC needed to incorporate the scoring criteria that is provided to applicant counties in the SB 863 Request for Proposals (RFP). This agenda item requests approval of the modified text of the regulations (Attachment E-1), and authorization to re-submit the Emergency Rulemaking package to OAL. If more substantive edits are necessary following the Emergency package filing, BSCC staff will seek approval of the edited text from the Board at the next available Board meeting.

Background

The BSCC assembled an ESC, as provided in CA Penal Code section 6024(c). In compliance with CA Penal Code section 6025.1¹ and Government Code Section 1090, the ESC is comprised of individuals without any relevant prohibited financial interest. On January 21, 2015 the ESC held its initial meeting to discuss elements of the RFP and the regulations. The ESC also met on February 26, 2015 and on March 26, 2015, when it finalized and voted to approve the regulations that appear as Attachment E-1.

SB 863 allows the BSCC to draft regulations that interpret and make specific the requirements of the legislation, including the BSCC's role in administering the \$500 million in construction financing. SB 863 contains an urgency clause which emphasizes the critical need for public safety. The BSCC must expedite the regulation through an accelerated process. This is accomplished by submitting an Emergency Rulemaking package to OAL. The BSCC has found that an emergency exists (see Attachment E-2.) A Certificate of Compliance Rulemaking is required following the Emergency filing in order to make the Emergency regulations permanent.

Upon OAL approval of the Emergency Rulemaking package, the regulations will be published and temporarily effective for 180 days, during which time the Certificate of Compliance Rulemaking will be filed. During the Certificate of Compliance period, BSCC staff will send the regulations out for a 45-day public comment period. Following the public comment period, a public hearing may be held in Sacramento, if requested or if the Board decides one is necessary. If additional substantive edits to the regulations are necessary, staff will seek approval of the edited text at the next available Board meeting.

Recommendation/Action Needed

Staff recommends:

1. The Board determine that the proposed regulations are necessary to address an emergency as defined in Government Code section 11342.545², and that an emergency exists, as stated in Attachment E-2.
2. The Board approve the modified text of the emergency regulations and amendments to the regulations.
3. The Board approve the publishing of the emergency adoptions and amendments to the regulations, and the filing of the entire package with the Office of Administrative Law.
4. The Board approve the filing of the Certificate of Compliance Rulemaking with the Office of Administrative Law subsequent to the emergency process, contingent on there being no further substantial edits.

Attachments

- E-1: DRAFT of Title 15, Division 1, Chapter 1, Subchapter 6, Construction Financing Program Regulations
- E-2: Finding of Emergency