

Finding of Emergency

The Chair of the Board of State and Community Corrections (BSCC) finds that an emergency exists and that this submittal of emergency rulemaking is necessary to address a situation that calls for immediate action to avoid serious harm to the public peace, health, safety or general welfare.

On June 20, 2014, Senate Bill (SB) 863 (Chapter 37, Statutes of 2014) became law, authorizing up to \$500 million in lease revenue bond financing for the acquisition, design, and construction of adult local criminal justice facilities. SB 863 also added the Department of Corrections and Rehabilitation (CDCR) as a participating state agency in the SB 1022 (Chapter 42, Statutes of 2012), Adult Local Criminal Justice Facilities Construction Financing Program. This meant that an additional party was added to the lease revenue bond financing, further complicating an already complex financing program.

The BSCC assembled an Executive Steering Committee (ESC) comprised of individuals with the expertise required by SB 863. The ESC members could not have any financial interest in any property, financing, decision, employment opportunity, jail or any program related to mental health or adult offenders, or any interest in any county property that might be improved or otherwise impacted by SB 863, therefore complying with the provisions of Section 1090 of the Government Code, the California Political Reform Act, and Section 6025.1 of the Penal Code.

The ESC members' selection is a long and difficult process. First, the person chosen must be a subject matter expert. This means he or she must have demonstrated, credible experience in the field, as provided in the statute. Even when BSCC is able to find such subject matter experts, their time is at a premium; they are sought after by other entities besides BSCC. In addition, they are nearly always already working for a county. BSCC money goes to local corrections; that means county jails and other offender programs. Most ESC subject matter experts are county employees, such as sheriffs, deputies, probation officers, or those who work in a parallel fashion with such county officers. It is very difficult to find subject matter experts who do not have at least the appearance of a possible conflict, due to their employment or their expertise itself.

In addition, ESC members need to come from geographically diverse populations, in order for BSCC to meet its statutory duty to seek the advice of a balanced range of stakeholders (see, e.g., Penal Code section 6024.) Finally, these ESC positions are not compensated; the members are reimbursed for travel and food only. It is hard to find such experienced people who are willing to add this commitment to their already full public service calendars. ESC membership requires a significant time commitment: there are several meetings, as well as training, and time to review complex documents such as Requests for Proposals, statutes and

regulations, as well as the time to actually rank and score county proposals in compliance with the statute and the regulations.

BSCC gets to work immediately upon hearing about a new program such as SB 863, yet it typically takes at least six to eight months to populate an ESC. Often, BSCC's first choice is unable to serve, even though he or she thought they could, so staff need to go back and choose a replacement. This situation occurred in connection with SB 863's ESC.

On January 21, 2015, the ESC met to begin the process of creating a Request for Proposals (RFP) and drafting regulatory language, in compliance with SB 863. The ESC also met on February 25, 2015, and March 26, 2015, when they finalized the regulatory language. The text of the proposed regulations was approved by the BSCC Board on April 9, 2015. The revised text will be resubmitted for approval to the BSCC Board on June 10, 2015.

Specific Facts Contributing to and Showing the Need for Immediate Action

The lease-revenue bond and capital outlay process is a significant factor in this emergency. The BSCC and other participating state agencies rely heavily on regulations to approve many aspects of SB 863 projects. Without regulations, the BSCC cannot award counties financing under the SB 863 program. The legislative language, Government Code (GC) section 15820.933, specifically notes the urgency inherent in getting adult local criminal justice facilities constructed to meet critical criminal justice system needs of local agencies, and for the State's purpose of promoting public safety. The Legislature has found and declared, in GC 15820.933(a), that California's current challenges in managing jail populations follow decades of overcrowded and aging jails, and that action is needed to prevent overcrowding and promote public safety.

The BSCC is seeking to award SB 863 financing as soon as possible in order to provide much needed aid for the counties who are currently operating overcrowded and aging jails. The conditions of many old jails are such that the jails may not meet current minimum standards as prescribed in Titles 15 and 24 of the California Code of Regulations. Many of these aging jails do not have any, or do not have sufficient, space for programing and treatment activities, and few contain space for mental health and treatment. Public realignment shifted inmates from State (CDCR) to county incarceration. Counties are now required to incarcerate inmates for much longer periods of time than current jails were intended to support; therefore, the jails need to make more space available in order to provide for the health and welfare of inmates and staff. Awarding counties that demonstrate need with bond financing as soon as possible will fill that critical need for public safety by promoting and providing a means to construct space for safe housing, programming services, and mental health and treatment services.

The construction deadlines in connection with this entire process are tight. Assuming Board approval on June 10, 2015, the Request for Proposals will be issued on June 10, 2015. Counties then have only until August 28, 2015 to prepare

their proposals. As provided in the regulation, counties must prove that they meet the criteria as provided in the statute, and that they are ready to proceed with the project as soon as financing can begin. The regular rulemaking would not allow for this process to move forward in compliance with these tight deadlines. For these reasons, the finding of emergency complies with Government Code section 11346.1 and OAL Rule 50.

The ESC member raters must go through rater training on September 16, 2015; they then have only until October 16 to review and rate all the proposals BSCC receives. Then, on October 22, 2015, the ESC must make its final decision and create recommendations for the Board, which then meets on November 12, 2015 to finally decide on the ESC's recommendations. Creating the recommendations is a multi-step, complex process that must be free from error as well as being balanced and fair, and in compliance with the statute.

SB 863 amended Government Code Section 15820.92, 15820.921, and 15820.924, originally enacted with the passing of SB 1022 in 2012. The amendment to Section 15820.92 authorizes CDCR to participate in the SB 1022 program by entering into agreements for the acquisition, design, and construction of criminal justice facilities. Amendments to Section 15820.921 gave CDCR the ability to participate in lease-revenue bond financing, benefitting the participating counties' SB 1022-awarded projects. The amendments also commit sufficient CDCR support appropriation if lease-revenue bonds are not sold. The amendments to Section 15820.924, authorize CDCR to enter into leases or subleases.

Without the proposed amendments, the Title 15 regulations are in conflict with current statutory language. CDCR was not originally a party to SB 1022 projects, and current language does not allow CDCR to participate in the SB 1022 program, so the regulations must be amended to harmonize with the statutes and the SPWB financing programs already underway.

Without the proper amendments to Title 15 Construction Financing Program regulations, current program activities could be jeopardized, and awarded projects could be delayed. Delay in project timelines and construction schedules is extremely costly to California's already disadvantaged local criminal justice systems. Significant delay could kill a project, rendering all the county time, effort and expense worthless.

The broad objective of this proposed emergency rulemaking is to amend SB 1022-applicable language to allow BSCC and CDCR to conduct program activities according to statutes and regulations, allow awarded projects to move forward with construction, and to release the SB 863 financing awards in a timely manner to address critical public safety needs, as expressly intended by the authorizing legislation.

Without these regulatory modifications, the legislature's SB 863 vision cannot be realized. The long-term, state-wide strategy, to effectively manage the state's jail

population and jail resources will not become a reality. Improved county adult criminal justice housing with an emphasis on expanding program and treatment space will remain an unattainable ideal. \$500,000.00, which the legislature intended for improved adult local criminal justice facilities will go unawarded, to waste. This would constitute a tragedy.

Authority and Reference Citations

Authority: Sections 15820.92, 15820.925, 15820.93, and 15820.935, Government Code.

Reference: Sections 1090, 15820.921, 15820.924, and 15820.933, Government Code. Sections 6024 and 6030, Penal Code.



05/29/2015

Linda M. Penner, Chair

Date