

## 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.

The BSCC assembled an Executive Steering Committee (ESC) comprised of individuals not having any financial interest in SB 863, therefore complying with the provisions of Section 1090 of the Government Code and Section 6025.1 of the Penal Code. 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, and finalized the regulatory language. The text of the proposed regulations was approved by the BSCC Board on April 9, 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 regulation to approve many aspects of SB 863 projects. Without regulations, the BSCC cannot award counties financing under the SB 863 program. The legislative language of SB 863, Government Code (GC) section 15820.933, specifically notes the urgency 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 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 the State (CDCR) incarceration 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 demonstrating 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.

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 give 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.

Without the proper amendments to Title 15 Construction Financing Program regulations, current program activities could be jeopardized, and awarded projects could be delayed. Delaying project timelines and construction schedules is extremely costly to California's already disadvantaged local criminal justice systems.

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.

#### 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.

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Linda M. Penner, Chair

Date