



LINDA M. PENNER  
*Chair*

KATHLEEN T. HOWARD  
*Executive Director*

STATE OF CALIFORNIA

**BOARD OF STATE AND COMMUNITY CORRECTIONS**

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EDMUND G. BROWN, JR.  
*Governor*

July 24, 2017

Dear Board Members,

On July 10, 2017, a 3-member appeal hearing panel appointed by Board Chair Linda Penner held a hearing regarding the timely appeal filed by San Joaquin County challenging the SB 844 awards made by the Board on June 8, 2017. Attached please find the recommendation by the 3-member appeal hearing panel to reject San Joaquin County's appeal. This recommendation is being provided for the Board's consideration in advance of the September 14, 2017 board meeting. (Cal. Code Regs., tit. 15, § 1790.)

At the September 14, 2017 board meeting, the Board may:

- (1) Adopt the proposed decision;
- (2) Amend the decision with or without taking additional evidence into consideration; or,
- (3) Order a further hearing to be conducted, if additional information is needed to decide the issue. (Cal. Code Regs., tit. 15, § 1792.)

Sincerely,

KATHLEEN T. HOWARD  
Executive Director

cc: Steve Moore, San Joaquin County Sheriff



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### Decision of SB 844 Appeals Hearing Panel

#### Procedural History

On June 27, 2016, Senate Bill 844 (Chapter 34, Statutes of 2016) (SB 844) became law, authorizing the Board of State and Community Corrections (hereafter the Board) to make conditional awards up to \$250,000,000 in state lease-revenue bond financing for the acquisition, design and construction of Adult Local Criminal Justice Facilities (ALCJF). SB 844 also set aside an additional \$20 million for the replacement of the earthquake-damaged jail in Napa County. (Exh. A.)

At its September 22, 2016 meeting, the Board approved the establishment of an Executive Steering Committee (ESC) for the SB 844 Adult Local Criminal Justice Facilities Construction Program.

On November 17, 2016, the BSCC authorized the release of the SB 844 Adult Local Criminal Justice Facility Construction financing Request for Proposals (RFP). (Exh. B.)

On May 17, 2017, the SB 844 ESC made its funding recommendations to the Board.

On June 8, 2017, the Board of State and Community Corrections made conditional awards to nine counties that competed for \$250 million in lease revenue bond authority pursuant to SB 844. (Exh. D.) San Joaquin County applied for \$7,672,000 in funding in the large county category, but did not receive an award.

On June 23, 2017, San Joaquin timely filed an appeal of the Board's action pursuant to Section 1788 of Title 15 of the California Code of Regulations. (Exh. E.)

On June 29, 2017, pursuant to Section 1790 of Title 15 of the California Code of Regulations, the Chair of the Board selected Board members Michael Ertola, Scott Kernan, and Linda Penner to hear the appeal and provided timely notice to the county that its appeal would be heard on July 10, 2017. (Exh. F.)

On July 10, 2017, the 3-member appeal hearing panel met and considered San Joaquin County's arguments.

## Factual Background

In 2013, San Joaquin County competed in the “medium county” category as part of the Board’s SB 1022 adult correction facility program and received a partial award of \$32,328,000 (out of \$40 million requested).<sup>1</sup> (Exh. G.) The small, medium, and large categories in SB 1022 were based on county population with the cutoff between the medium and large county categories set at 700,000. In 2017, the same population cutoffs were used in the SB 844 RFP. San Joaquin applied for \$7,672,000 and competed in the “large county” category.

## Issues on Appeal

A county may appeal the Board’s SB 844 awards on the basis of the Board’s alleged evaluation or assessment criteria misapplication, capricious enforcement of regulations, or substantial differences of opinion as may occur concerning the proper application of regulations or procedures regarding the proposal evaluation and rating process or application assessment process. (Cal. Code Regs., tit. 15, § 1776.)

1. San Joaquin County argues that it should have received funding preference for its SB 844 application because it had received a partial award under SB 1022. The county argues that “the Executive Steering Committee failed to take into account the intent of the legislature [sic] to provide supplemental funds for those who received only partial awards under SB 1022, before providing funding for those who received no award at all.” (Exh. E at p. 3.)
2. San Joaquin County also suggests that it should have competed in the “medium county” category for SB 844 as it did when SB 1022 awards were made. (Exh. E at p. 1.)

## Discussion

### Claim #1

San Joaquin County argues that it should have received funding because the legislative intent of SB 844 was to provide supplemental funding to counties that previously received partial awards. There is no evidence the Legislature intended to provide a preference to counties previously awarded funding. SB 844 provided, in part:

“[...]

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<sup>1</sup> San Joaquin initially received a conditional award of \$33,352,000, which was rescinded when Stanislaus County successfully appealed its lack of award. On February 4, 2016, Santa Barbara County relinquished its conditional award of \$38,976,000. Tulare County received an additional \$4,414,000 and San Joaquin received the balance of \$32,328,000.

(b) The BSCC shall determine the funding and scoring criteria consistent with the requirements of this chapter. Financing shall be awarded only to those counties that have previously received only a partial award or have never received an award from the state within the financing programs authorized in Chapters 3.11 (commencing with Section 15820.90) to 3.131 (commencing with Section 15820.93), inclusive. The funding criteria shall include, as a mandatory criterion, documentation of the percentage of pretrial inmates in the county jail from January 1, 2015, to December 31, 2015, inclusive, and a description of the county's current risk assessment based pretrial release program. Funding preference shall also be given to counties that are most prepared to proceed successfully with this financing in a timely manner. The determination of preparedness to proceed shall include the following:

(1) Counties providing a board of supervisors' resolution authorizing an adequate amount of available matching funds to satisfy the counties' contribution and approving the forms of the project documents deemed necessary, as identified by the board to the BSCC, to effectuate the financing authorized by this chapter, and authorizing the appropriate signatory or signatories to execute those documents at the appropriate times. The identified matching funds in the resolution shall be compatible with the state's lease-revenue bond financing.

(2) Counties providing documentation evidencing CEQA compliance has been completed. Documentation of CEQA compliance shall be either a final Notice of Determination or a final Notice of Exemption, as appropriate, and a letter from county counsel certifying the associated statute of limitations has expired and either no challenges were filed or identifying any challenges filed and explaining how they have been resolved in a manner that allows the project to proceed as proposed."

(Gov. Code, § 15820.946 [emphasis added].)

There is nothing in the plain language of SB 844 or the legislative history of SB 844 to suggest that the Legislature intended to give partial awardees preferential treatment over counties that had never received awards during the competitive application process. Rather the purpose of the language above was to prohibit prior full awardees from receiving additional funding. The only other funding preference required by SB 844 was to give preference to counties most prepared to proceed, i.e., providing evidence of adequate funding and evidence of CEQA compliance. (Gov. Code, § 15820.946, subd. (b)(1) & (2).) It should also be noted that Napa County had received a partial award as part of the SB 863 adult criminal justice facility construction financing program. (Exh. A.) As part of SB 844, the Legislature explicitly and specifically set aside \$20 million for Napa County. (Gov. Code, § 15820.946, subd. (b).) If the Legislature wished to earmark funding to other partial awardees such as San Joaquin County, it could have done so either in SB 844 or by increasing the funding authority in prior lease revenue bond programs. Since the Legislature did not specify that such

preferential treatment should be accorded to partial awardees, the Executive Steering Committee did not err in constructing the RFP without such a requirement. In the absence of additional criteria in the RFP itself, the ESC could not and did not err by failing to award San Joaquin additional preference points for receiving a partial award. As such, the appeal hearing panel recommends that the Board reject this claim.

#### Claim #2

San Joaquin County also suggests that it should have competed in the “medium county” category as it did when it applied for SB 1022 funding. It is recommended that the Board reject this claim.

Since the inception of the lease revenue adult facility construction programs in 2007, the Board (and its predecessor body, the Corrections Standards Authority,) grouped similarly situated counties into three different categories based on population size: small, medium, and large. For SB 1022, medium counties were defined as counties with estimated populations between 200,001 and 700,000 persons. (SB 1022 RFP at p. 15).<sup>2</sup> The SB 1022 RFP used the Department of Finance’s 2013 population estimates and it was estimated at the time that San Joaquin County had a population of 698,414<sup>3</sup> people. (Exh. H.) As such, San Joaquin County competed in the “medium” county category for SB 1022. The SB 844 RFP used the same county population thresholds as SB 1022 to divide the counties into small, medium, and large groups (Exh. B at p. 11), and at the time of release of the SB 844 RFP, it was estimated that San Joaquin County had a population of 735,677.<sup>4</sup> (Exh. I.) Consequently, the ESC properly rated San Joaquin in the large county category based on the criteria set forth in the SB 844 RFP.

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<sup>2</sup> [http://www.bscc.ca.gov/downloads/SB\\_1022\\_Final\\_RFP\\_7.23.13\\_-\\_1\\_FOR\\_WEB.pdf](http://www.bscc.ca.gov/downloads/SB_1022_Final_RFP_7.23.13_-_1_FOR_WEB.pdf)

<sup>3</sup> It should be noted that the Department of Finance continually revises prior year estimates of city and county populations based on available data. Currently, the Department of Finance estimates that the population of San Joaquin County on 1/1/2013 was 704,727. (Exh I.)

<sup>4</sup> San Joaquin County also competed in the large county category when applying for funding under SB 863 (Chapter 37, Statutes of 2014). (See <http://www.bscc.ca.gov/downloads/SB%20863%20-%20RFP.pdf> at p. 10.)

Recommendation

The hearing panel recommends that the Board reject San Joaquin County's appeal.



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Linda Penner

/s/ Scott Kernan  
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Scott Kernan

/s/ Michael Ertola  
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Michael Ertola

Attachment K-1