

Finding of Emergency

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

Specific Facts Contributing to and Showing the Need for Immediate Action

On June 27, 2012, SB 1022 (Chapter 42, Statutes of 2012) became law authorizing state lease-revenue bond financing for the acquisition, design and construction of adult local criminal justice facilities. On July 1, 2012, the Corrections Standards Authority (CSA) became the Board of State and Community Corrections (BSCC), an agency independent of the Department of Corrections and Rehabilitation (CDCR).

During the first year of the transition away from CDCR, the BSCC went through a series of difficult transitions directly related to the creation of a new stand-alone agency. BSCC staff time and effort was directed towards the immediate need of keeping basic services available to our constituents.

The implementation of the SB 1022 legislation was not without its own difficulties. On October 26, 2012, an Executive Steering Committee was commenced to discuss interpretations of the statute and essential aspects of how the BSCC would award financing. A follow-up meeting was held on December 20, 2012 to finalize the ESC's decisions. However, on January 25, 2013, the Office of the Attorney General issued an opinion ruling that the SB 1022 ESC members were in violation of Section 1090, Conflict of Interest Prohibition. The ESC members having financial interests in SB 1022 were removed from the ESC panel; any and all decisions made by the ESC were repealed and so stricken from the record.

On June 27, 2013, Penal Code Section 6025.1 was amended to include language prohibiting BSCC ESC members from having any financial interest in a bond financing transaction. Section 6025.1 of the Penal Code states: "For purposes of Section 1090 of the Government Code, members of a committee created by the Board, including a member of the Board in his or her capacity as a member of a committee created by the Board, have no financial interest in any contract made by the Board, including a grant or bond financing transaction, based upon the receipt of compensation for holding public office or public employment."

The BSCC assembled a modified ESC panel comprised of individuals not having any financial interest in SB 1022 and therefore in compliance with Section 1090

of the Government Code and Section 6025.1 of the Penal Code. On March 18, 2013, the ESC met to begin the process of approving the Request for Proposals (RFP). The elements of the RFP were completed the same day and the RFP package was approved by the Board on July 22, 2013.

During the months of May, 2013 through September, 2013 the construction division responsible for these regulations underwent a structural administrative transition. The County Facilities Construction Division was dissolved into the Facilities Division, losing the two experienced staff members and Deputy Director and gaining four new staff members.

The training of new staff was expedited in order to begin work on these regulations, which must be effective upon filing with the Secretary of State prior to the award of SB 1022 bond financing, scheduled and approved by the Board for January, 2014. Government Code Section 15820.923(c) states "By expanding county adult criminal justice capacity, this financing will serve a critical state purpose by promoting public safety". The further delay of awards may cause serious repercussions of harm to the public peace, safety or general welfare due to the current realignment efforts and the U.S. Supreme Court ruling ordering Governor Brown to release 10,000 more inmates. Without these emergency regulations, county facilities will continue early releases due to custodial housing crowding, lack of program space, mental health and treatment space necessary to manage the current and forthcoming adult offender population.

Authority and Reference Citations

Authority: Sections 15820.923 and 15820.925, Government Code.

Reference: Sections 1090 and 15820.923, Government Code. Section 6025, Penal Code.

Documents Relied Upon

SB 1022 – Request for Proposals: Construction of Adult Local Criminal Justice Facilities, dated July 23, 2013.

Date: 12/23/2013

Signed: Kathleen Howard

Kathleen Howard
Executive Director