

MEETING DATE: July 12, 2018

AGENDA ITEM: B

TO: BSCC Chair and Members

FROM: Aaron Maguire, General Counsel, aaron.maguire@bscc.ca.gov

SUBJECT: Delegation of Authority to Executive Director to Execute Lease Revenue Bond Program Documents: **Requesting Approval**

Summary

This item requests the Board delegate authority to the Executive Director of the Board of State and Community Corrections to execute documents related to the construction and financing of local detention facilities projects authorized by the Legislature pursuant to Senate Bill 1022 (Chapter 42, Statutes of 2012), Senate Bill 863 (Chapter 37, Statutes of 2014), and Senate Bill 844 (Chapter 34, Statutes of 2016). This item also requests the Board to ratify all prior agreements executed by the Chair, Executive Director, and subordinate officers.

Background

The Board has been tasked by the Legislature over the years to administer programs related to the construction of local detention facilities. Prior to 2012, these functions were carried out by the California Department of Corrections and Rehabilitation and the Corrections Standards Authority (the predecessor agency of the Board of State and Community Corrections). In 2012, beginning with Senate Bill 1022, the BSCC has been designated as the entity to enter into leases or subleases for any property or approved adult local criminal justice facilities to facilitate the financing (i.e., the sale of bonds) authorized by the Legislature.

For bonds to be sold by the State Treasurer, the Attorney General must provide an opinion that the State has the lawful authority to issue bonds after having examined all records, certifications, and documents necessary to effectuate the sale. During the construction of a local detention facility there are several agreements that are executed between the State Public Works Board, the county participant, and the Board. These agreements must be executed to ensure that the bonds are repaid through lease payments. Although existing law (Penal Code section 6024, subdivision (a)) designates the Executive Director as the administrative head of the Board and grants authority to the Executive Director to "exercise all duties and functions necessary to ensure that the responsibilities of the board are successfully discharged," the Attorney General's Office has opined that the Board must either approve and execute the above-referenced agreements or explicitly delegate authority to the Executive Director to execute these agreements before the Treasurer can sell bonds for the BSCC projects. The first sale will occur in the Fall. The Board has the authority to delegate any ministerial authority or duty to a subordinate officer. (Pen. Code, § 6025.6.) For purposes of efficiency, staff recommends the delegation of signature authority to the Chair,

Executive Director, and any subordinate officer. In addition, staff also recommends ratifying all prior executed agreements.

Recommendation/Action Needed

1. The Board delegate and vest all necessary authority to the Chair, Executive Director, or subordinate officer of the Board of State and Community Corrections, to sign and execute all necessary agreements, including: (1) a Project Delivery Construction Agreement; (2) a Ground lease (including a form of Right of Entry and Easement Agreement); (3) a Site Lease; (4) a Facility Lease; and (5) a Facility Sublease.
2. Approve and ratify all prior actions previously taken by the Chair, Executive Director and each subordinate officer with respect to the acquisition, design, construction and financing of the above referenced construction projects.
3. Approve the attached resolution and authorize Chair Linda Penner to sign the resolution, evidencing the delegation of signature authority.

Attachments

- B-1: Delegation of Authority
- B-2: Form of Design-Build PDCA
- B-3: Form of Design-Bid-Build PDCA
- B-4: Form of Ground Lease
- B-5: Form of Site Lease
- B-6: Form of Facility Lease
- B-7: Form of Facility Sublease