

Finding of Emergency

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. (Gov. Code, § 11346.1.)

On June 27, 2016, Senate Bill (SB) 844 (Chapter 34, Statutes of 2016) became law, authorizing up to \$270 million in lease revenue bond financing for the acquisition, design, and construction of adult local criminal justice facilities. The BSCC assembled an Executive Steering Committee (ESC) comprised of individuals with the expertise required by SB 844.

On October 20, 2016, an Executive Steering Committee appointed by the Board met to begin the process of creating a Request for Proposals (RFP) and drafting regulatory language, in compliance with SB 844. The ESC also met on November 10, 2016, when they finalized the regulatory language. On November 17, the Board approved the text of the proposed regulations and made a finding of an emergency within the meaning of Government Code section 11342.545.

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 844 projects. Without regulations, the BSCC cannot award counties financing under the SB 844 program. The legislative language, Government Code section 15820.943, 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 that California's current challenges in managing jail populations includes "decades of overcrowded and aging jails, and piecemeal, erratic, and incomplete responses to dealing with those problems." Furthermore, the Legislature found that improving county adult criminal justice housing will serve a "critical state purpose by promoting public safety" and that jail resources must be "employed efficiently and effectively to prevent overcrowding and promote public safety through the broader use of evidence-based practices and policies in the criminal justice system. (Gov. Code, § 15820.943, subd.(a).)

The BSCC is seeking to award SB 844 financing as soon as possible in order to provide much needed aid for the counties that 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 treatment. Several jail facilities are subject to court orders to reduce

population or are the subject of ongoing litigation. Public Safety Realignment (AB 109, Ch. 15, Statutes of 2011) shifted inmates from the 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.

In addition, of the \$270 million provided in SB 844, \$20 million was specifically set aside for the County of Napa to address the extensive damage caused by an earthquake to the Napa County Jail in 2014. (See Sen. Rules Com., Off. of Sen. Floor Analyses, unfinished business analysis of Sen. Bill No. 844 (2015-2016 Reg. Sess.) as amended June 12, 2016.) On August 24, 2014, the largest earthquake since the 1989 Loma Prieta earthquake occurred in the southern Napa Valley. Total damage was estimated up to \$1 billion dollars and the Napa County Jail was severely damaged. The program areas in the jail were severely impacted, public restrooms were closed (and remain closed on several floors), in-person visiting remains unavailable, and 41 inmates continue to reside in Solano County due to the damage at the Napa Jail. The damage to the Napa County Jail remains a public safety hazard.

The current proposed timeline for the SB 844 Request for Proposals will require the Request for Proposals to be released in December 2016 in order to meet the proposed programmatic deadlines. Counties will have only until February 28, 2017 to prepare their proposals. As provided in the proposed regulations, 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 this necessary, expedited timeline.

The ESC member raters must go through rater training on March 14, 2017; they then have only until May 5, 2017 to review and rate all the proposals BSCC receives. Then, on May 17, 2017, the ESC must make its final decision and create recommendations for the Board, which then meets in June 2017 to finally decide on the ESC's recommendations.

For these reasons, to address the immediate concerns regarding the lack of jail construction funding and specifically to address the disaster caused by the Napa earthquake, the finding of emergency complies with Government Code section 11346.1 and section 50 of Title 1 of the California Code of Regulations.

SB 844 added Government Code sections 15820.94, 15820.940, 15820.941, 15820.942, 15820.943, 15820.944, 15820.945, and 15820.946. Consequently, this is a new construction program that is not referenced in the Board's Title 15 regulations. Without amendments to the current regulations, programmatic

differences between the prior adult correctional facilities programs and SB 844 will not be addressed.

Without the proper amendments to Title 15 Construction Financing Program regulations, current program activities could be jeopardized, and projects will 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 add and enact new provisions to the existing adult facilities construction programs 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 844 financing awards in a timely manner to address critical public safety needs, as expressly intended by the authorizing legislation.

Without these regulatory modifications, 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. \$270,000.00, which the legislature intended for improved adult local criminal justice facilities will go unawarded. Finally, \$20,000,000 specifically set aside to respond to address the emergency situation in Napa County caused by the 2014 earthquake will not be released.

Proposal Evaluation Criteria – Explanation

Section 1740.4 of the proposed regulations describes the criteria by which proposals submitted to the Board will be evaluated. The scoring criteria was developed by the SB 844 Executive Steering Committee and approved by the Board. Out of a total 100% value of the scoring criteria, each category is assigned a proportion of value, i.e, Statement of Need (15%), Scope of Work (15%), Offender Programming and Services (25%), the Administrative Work Plan (10%), Budget Narrative (10%), Readiness Factor A: Board Resolution (10%), and Readiness Factor B: CEQA Compliance (15%). Except for Readiness Factors A & B, which will receive 0 or 12 points, each of the categories will be scored using the same raw scale: 0-12 points. However, each category will receive a different weighted score based on the proportional value assigned by the SB 844 Executive Steering Committee and then multiplied by 10. (This multiplier is used to increase the overall point total, which increases the scale and allows for a wider range of possible scores.) For example, the total possible weighted points for Statement of Need is calculated as follows: $12 \times (.15) \times 10 = 18$. If an applicant receives 10 out of 12 points under Statement of Need, the applicant will receive a total of 15 points for that category. The total number of possible weighted points available is 120. The maximum weighted score for each category is as follows: Statement of Need (18 points), Scope of Work (18 points), Offender Programming and Services (30 points), the Administrative Work Plan (12 points), Budget Narrative (12 points),

Readiness Factor A: Board Resolution (12 points), and Readiness Factor B: CEQA Compliance (18 points).

In addition to the weighted points, the SB 844 Executive Steering Committee and the Board approved the use of three special factors, which are included in the scoring of the Scope of Work category (Special Factor A/B: Feasible plan to replace compact housing/expand program/treatment space) and Offender Programming and Services (Special Factor A: Documents pretrial inmate population and Special Factor B: Describes risk assessment-based pretrial release process). Each of these three unweighted factors can receive a maximum number of four points each for a total of 12 points. These 12 points will then added to the weighted scores.

The maximum number of points available for each proposal will be 132 (120 points for weighted scoring criteria + 12 points for special factors).

Authority and Reference Citations

Authority: Sections 15820.94, 15820.940, 15820.941, 15820.942, 15820.943, 15820.944, 15820.945, and 15820.946, of the Government Code, and Section 6030 of the Penal Code.

Reference: Sections 15820.94, 15820.940, 15820.941, 15820.942, 15820.943, 15820.944, 15820.945, and 15820.946, of the Government Code.

Kathleen T. Howard 12/15/16
Kathleen T. Howard, Executive Director Date