

## Senate Bill No. 863

### CHAPTER 37

An act to amend Sections 15820.92, 15820.921, and 15820.924 of, and to add Chapter 3.131 (commencing with Section 15820.93) to Part 10b of Division 3 of Title 2 of, the Government Code, relating to correctional facilities, and making an appropriation therefor, to take effect immediately, bill related to the budget.

[Approved by Governor June 20, 2014. Filed with  
Secretary of State June 20, 2014.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 863, Committee on Budget and Fiscal Review. Correctional facilities: construction.

(1) Existing law authorizes the Board of State and Community Corrections (BSCC), a participating county, as defined, and the State Public Works Board to acquire, design, and construct an adult local criminal justice facility, as specified, and requires them to enter into an agreement for each facility that provides related performance expectations of the parties, guidelines and criteria for the use and application of the financing instruments used to pay for the facility, and ongoing maintenance and staffing responsibilities for the term of the financing. Existing law also authorizes the State Public Works Board and the BSCC to borrow funds from the Pooled Money Investment Account or from another appropriate source for project costs of an adult local criminal justice facility. Existing law authorizes the BSCC and a participating county, with the consent of the State Public Works Board, to enter into leases, contracts, or other agreements for property use, maintenance, or operation of an adult local criminal justice facility.

This bill would also authorize the Department of Corrections and Rehabilitation to participate in the financing program with participating counties and the State Public Works Board for the acquisition, design, and construction of adult local criminal justice facilities, to enter into the required agreements, to borrow funds, and to enter into leases, contracts, or other agreements for these purposes, as specified.

(2) Existing law authorizes the Board of State and Community Corrections, the State Public Works Board, and a participating county, as defined, to acquire, design, and construct an adult local criminal justice facility approved by the Board of State and Community Corrections, or to acquire a site or sites owned by, or subject to a lease option to purchase held by, a participating county. Existing law authorizes the State Public Works Board to issue up to \$500,000,000 in revenue bonds, notes, or bond anticipation notes to finance the acquisition, design, and construction of approved adult local criminal justice facilities. The funds derived from those

revenue bonds, notes, or bond anticipation notes are continuously appropriated for those purposes.

Existing law establishes the Department of Corrections and Rehabilitation to oversee the state prison system. Existing law authorizes the Department of Corrections and Rehabilitation to design, construct, or renovate housing units, support buildings, and programming space in order to add capacity to facilities under its jurisdiction.

This bill would enact provisions similar to the provisions described above authorizing the Board of State and Community Corrections or the department, the State Public Works Board, and a participating county, as defined, to acquire, design, and construct an adult local criminal justice facility, as defined. The bill would authorize the State Public Works Board to issue up to \$500,000,000 in revenue bonds, notes, or bond anticipation notes to finance the acquisition, design, and construction of approved adult local criminal justice facilities, and would continuously appropriate the funds for those purposes. The bill would establish procedures for approving and funding these projects.

(3) This bill would declare that it is to take effect immediately as a bill providing for appropriations related to the Budget Bill.

Appropriation: yes.

*The people of the State of California do enact as follows:*

SECTION 1. Section 15820.92 of the Government Code is amended to read:

15820.92. For purposes of this chapter, “participating county” means any county, or regional consortium of counties, within the state that has been certified to the State Public Works Board (the board) by the Board of State and Community Corrections (BSCC) as having satisfied all of the requirements set forth in Section 15820.925 for financing an adult local criminal justice facility pursuant to this chapter. For purposes of this chapter, an adult local criminal justice facility may include any custodial housing, reentry, program, mental health, or treatment space necessary to manage the adult offender population consistent with the legislative intent described in Sections 17.5 and 3450 of the Penal Code under the jurisdiction of the sheriff or county department of corrections, as may be applicable, to be further defined by the BSCC in duly adopted regulations.

(a) The BSCC or the Department of Corrections and Rehabilitation (CDCR), a participating county, and the board are authorized to acquire, design, and construct an adult local criminal justice facility approved by the BSCC pursuant to Section 15820.925, or to acquire a site or sites owned by, or subject to a lease or option to purchase held by, a participating county. For the purposes of this chapter, acquisition shall include, but is not limited to, acquisition of completed facilities through a build-to-suit purchase. Facilities financed pursuant to this chapter may be delivered through either a design-bid-build or a design-build process. The ownership interest of a

participating county in the site or sites for an adult local criminal justice facility shall be determined by the board to be adequate for purposes of its financing in order to be eligible under this chapter.

(b) Notwithstanding Section 14951, the participating county may assign an inspector during the construction of the adult local criminal justice facility.

(c) The BSCC or the CDCR, a participating county, and the board shall enter into an agreement for each adult local criminal justice facility that shall provide, at a minimum, performance expectations of the parties related to the acquisition, design, and construction, including, without limitation, renovation, of the adult local criminal justice facility; guidelines and criteria for use and application of the proceeds of revenue bonds, notes, or bond anticipation notes issued by the board to pay for the cost of the approved adult local criminal justice facility; and ongoing maintenance and staffing responsibilities for the term of the financing.

(d) The agreement shall include a provision that the participating county agrees to indemnify, defend, and hold harmless the State of California for any and all claims and losses arising out of the acquisition, design, and construction of the adult local criminal justice facility. The agreement may also contain additional terms and conditions that facilitate the financing by the board.

(e) The scope and cost of the adult local criminal justice facilities shall be subject to approval and administrative oversight by the board.

(f) For purposes of compliance with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), the board, BSCC and the CDCR, are not a lead or responsible agency, but the participating county is the lead agency.

SEC. 2. Section 15820.921 of the Government Code is amended to read:

15820.921. Upon a participating county's receipt of responsive construction bids or design-build proposals, or a participating county's notification to the board of its intent to exercise a purchase option, the board and the BSCC or the CDCR may borrow funds for project costs after the adult local criminal justice facility has been certified pursuant to Section 15820.92 from the Pooled Money Investment Account pursuant to Sections 16312 and 16313, or from any other appropriate source. In the event any of the revenue bonds, notes, or bond anticipation notes authorized by this chapter are not sold, the BSCC or the CDCR shall commit a sufficient amount of its support appropriation to repay any loans made for an approved adult local criminal justice facility.

SEC. 3. Section 15820.924 of the Government Code is amended to read:

15820.924. With the consent of the board, the BSCC or the CDCR and a participating county are authorized to enter into leases or subleases, as lessor or lessee, for any property or approved adult local criminal justice facility and are further authorized to enter into contracts or other agreements for the use, maintenance, and operation of the adult local criminal justice facility in order to facilitate the financing authorized by this chapter. In those leases, subleases, or other agreements, the participating county shall agree to indemnify, defend and hold harmless the State of California for

any and all claims and losses accruing and resulting from or arising out of the participating county's use and occupancy of the adult local criminal justice facility.

SEC. 4. Chapter 3.131 (commencing with Section 15820.93) is added to Part 10b of Division 3 of Title 2 of the Government Code, to read:

CHAPTER 3.131. FINANCING OF LOCAL CRIMINAL JUSTICE FACILITIES

15820.93. (a) For purposes of this chapter, "participating county" means a county, city and county, or regional consortium of counties, within the state that has been certified to the State Public Works Board (board) by the Board of State and Community Corrections (BSCC) as having satisfied all of the requirements set forth in Section 15820.935 for financing an adult local criminal justice facility pursuant to this chapter.

(b) (1) For purposes of this chapter, an adult local criminal justice facility may include improved housing with an emphasis on expanding program and treatment space as necessary to manage the adult offender population consistent with the legislative intent described in Sections 17.5 and 3450 of the Penal Code under the jurisdiction of the sheriff or county department of corrections, as may be applicable, to be further defined by the BSCC in duly adopted regulations.

(2) For purposes of this chapter, an adult local criminal justice facility may also include custodial housing, reentry, program, mental health, or treatment space necessary to manage the adult offender population, consistent with the legislative intent described in Sections 17.5 and 3450 of the Penal Code, under the jurisdiction of the sheriff or county department of corrections, as may be applicable, to be further defined by the BSCC in duly adopted regulations.

15820.930. (a) The BSCC or the Department of Corrections and Rehabilitation (CDCR), a participating county, and the board are authorized to acquire, design, and construct an adult local criminal justice facility approved by the BSCC pursuant to Section 15820.935, or to acquire a site or sites owned by, or subject to a lease or option to purchase held by, a participating county. For the purposes of this chapter, acquisition shall include, but is not limited to, acquisition of completed facilities through a build-to-suit purchase. Facilities financed pursuant to this chapter may be delivered through either a design-bid-build or a design-build process. The ownership interest of a participating county in the site or sites for an adult local criminal justice facility shall be determined by the board to be adequate for purposes of its financing in order to be eligible under this chapter.

(b) Notwithstanding Section 14951, the participating county may assign an inspector during the construction of the adult local criminal justice facility.

(c) The BSCC or the CDCR, a participating county, and the board shall enter into an agreement for each adult local criminal justice facility that shall provide, at a minimum, performance expectations of the parties related to the acquisition, design, and construction, including, without limitation,

renovation, of the adult local criminal justice facility; guidelines and criteria for use and application of the proceeds of revenue bonds, notes, or bond anticipation notes issued by the board to pay for the cost of the approved adult local criminal justice facility; and ongoing maintenance and staffing responsibilities for the term of the financing.

(d) The agreement shall include a provision that the participating county agrees to indemnify, defend, and hold harmless the State of California for any and all claims and losses arising out of the acquisition, design, and construction of the adult local criminal justice facility. The agreement may also contain additional terms and conditions that facilitate the financing by the board.

(e) The scope and cost of the adult local criminal justice facilities shall be subject to approval and administrative oversight by the board.

(f) For purposes of compliance with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), the board, BSCC, and the CDCR are not a lead or responsible agency, the participating county is the lead agency.

15820.931. Upon a participating county's receipt of responsive construction bids or design-build proposals, or a participating county's notification to the board of its intent to exercise a purchase option, and after the adult local criminal justice facility has been certified pursuant to Section 15820.93, the board and the BSCC or the CDCR may borrow funds for project costs from the Pooled Money Investment Account pursuant to Sections 16312 and 16313, or from any other appropriate source. In the event any of the revenue bonds, notes, or bond anticipation notes authorized by this chapter are not sold, the BSCC or the CDCR shall commit a sufficient amount of its support appropriation to repay any loans made for an approved adult local criminal justice facility.

15820.932. (a) The board may issue up to five hundred million dollars (\$500,000,000) in revenue bonds, notes, or bond anticipation notes, pursuant to Chapter 5 (commencing with Section 15830) to finance the acquisition, design, and construction, including, without limitation, renovation, and a reasonable construction reserve, of approved adult local criminal justice facilities described in Section 15820.930, and any additional amount authorized under Section 15849.6 to pay for the cost of financing.

(b) Proceeds from the revenue bonds, notes, or bond anticipation notes may be used to reimburse a participating county for the costs of acquisition, design, and construction, including, without limitation, renovation, for approved adult local criminal justice facilities.

(c) Notwithstanding Section 13340, funds derived pursuant to this section and Section 15820.931 are continuously appropriated for purposes of this chapter.

15820.933. In support of this state financing, the Legislature finds and declares all of the following:

(a) California's current challenges in managing jail populations follow decades of overcrowded and aging jails, and piecemeal, erratic, and incomplete responses to dealing with these problems. Reversing course will

require sustainable solutions that must include sound planning and implementation, and must be grounded in the principle that jail resources must be well-planned and 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.

(b) California needs a long-term, statewide strategy to effectively manage its jail population and jail resources. Without an ongoing analytical framework for taking into account factors such as population growth, criminogenic needs of the current and future jail populations, crime rates, custodial housing needs, and additional changes to realignment or sentencing laws and practices, California will continue to resort to reactive, fragmentary fixes to its jail condition and capacity problems instead of being fully prepared to develop an effective and sustainable system of local custodial facilities.

(c) The county adult criminal justice system needs improved housing with an emphasis on expanding program and treatment space to manage the adult offender population under its jurisdiction.

(d) Improved county adult criminal justice housing with an emphasis on expanding program and treatment space will enhance public safety throughout the state by providing increased access to appropriate programs or treatment.

(e) By improving county adult criminal justice housing with an emphasis on expanding program and treatment space, this financing will serve a critical state purpose by promoting public safety.

(f) This purpose represents valuable consideration in exchange for this state action.

15820.934. With the consent of the board, the BSCC or the CDCR and a participating county are authorized to enter into leases or subleases, as lessor or lessee, for any property or approved adult local criminal justice facility and are further authorized to enter into contracts or other agreements for the use, maintenance, and operation of the adult local criminal justice facility in order to facilitate the financing authorized by this chapter. In those leases, subleases, or other agreements, the participating county shall agree to indemnify, defend, and hold harmless the State of California for any and all claims and losses accruing and resulting from or arising out of the participating county's use and occupancy of the adult local criminal justice facility.

15820.935. (a) The BSCC shall adhere to its duly adopted regulations for the approval or disapproval of adult local criminal justice facilities. The BSCC shall also consider cost-effectiveness in determining approval or disapproval. No state moneys shall be encumbered in contracts let by a participating county until one of the following occur:

(1) Final architectural plans and specifications have been approved by the BSCC, and subsequent construction bids have been received.

(2) Documents prepared by a participating county pursuant to paragraph (1) of subdivision (d) of Section 20133 of the Public Contract Code have

been approved by the BSCC, and subsequent design-build proposals have been received pursuant to that section.

(3) The participating county has notified the board of its intent to exercise an option to purchase the completed facility pursuant to Section 15820.931.

(b) The review and approval of plans, specifications, or other documents by the BSCC are for the purpose of ensuring the proper administration of moneys and the determination of whether the adult local criminal justice facility specifications comply with law and regulation. The BSCC may require changes in construction materials to enhance safety and security if materials proposed at the time of final plans and specifications are not essential and customary as used statewide for facilities of the same security level. Participating counties are responsible for the acquisition, design, construction, staffing, operation, repair, and maintenance of the adult local criminal justice facility.

(c) The BSCC shall establish minimum standards, funding schedules, and procedures, which shall take into consideration, but not be limited to, the following:

(1) Certification by a participating county of control of the adult local criminal justice facility site through either fee simple ownership of the site or comparable long-term possession of the site, and right of access to the adult local criminal justice facility sufficient to ensure undisturbed use and possession.

(2) Documentation of the need for improved adult local criminal justice facility housing with an emphasis on expanded program and treatment space.

(3) A written adult local criminal justice facility proposal.

(4) Submission of a staffing plan for the adult local criminal justice facility, including operational cost projections and documentation that the adult local criminal justice facility will be able to be safely staffed and operated within 90 days of completion, as may be applicable.

(5) Submission of architectural drawings, which shall be approved by the BSCC for compliance with minimum adult detention facility standards and which shall also be approved by the State Fire Marshal for compliance with fire safety and life safety requirements.

(6) Documentation evidencing compliance with the California Environmental Quality Act (CEQA).

(7) Provisions intended to maintain the tax-exempt status of the bonds, notes, or bond anticipation notes issued by the board.

15820.936. (a) The participating county contribution for adult local criminal justice facilities financed under this chapter shall be a minimum of 10 percent of the total project costs. The BSCC may reduce contribution requirements for participating counties with a general population below 200,000 upon petition by a participating county to the BSCC requesting a lower level of contribution.

(b) The BSCC shall determine the funding and scoring criteria. The BSCC may consider award history in Chapters 3.11 to 3.13, inclusive, in its scoring of adult local criminal justice facilities applications. The funding criteria shall include, as a mandatory criterion, documentation of the

percentage of pretrial inmates in the county jail from January 1, 2013, to December 31, 2013, 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.

(c) Funding consideration shall be given to counties that are seeking to replace compacted, outdated, or unsafe housing capacity or are seeking to renovate existing or build new facilities that provide adequate space for the provision of treatment and rehabilitation services, including mental health treatment.

(d) A participating county may replace existing housing capacity, realizing only a minimal increase of capacity, using this financing authority if the requesting county clearly documents an existing housing capacity deficiency.

SEC. 5. This act is a bill providing for appropriations related to the Budget Bill within the meaning of subdivision (e) of Section 12 of Article IV of the California Constitution, has been identified as related to the budget in the Budget Bill, and shall take effect immediately.