

AMENDED IN ASSEMBLY JUNE 12, 2016

AMENDED IN ASSEMBLY MAY 25, 2016

SENATE BILL

No. 844

Introduced by Committee on Budget and Fiscal Review

January 7, 2016

An act relating to the Budget Act of 2016. An act to add Chapter 3.132 (commencing with Section 15820.94) 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.

LEGISLATIVE COUNSEL'S DIGEST

SB 844, as amended, Committee on Budget and Fiscal Review.
~~Budget Act of 2016. Correctional facilities: construction: financing.~~

Existing law authorizes the Board of State and Community Corrections or the Department of Corrections and Rehabilitation, 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.

This bill would enact provisions similar to the provisions described above authorizing the Board of State and Community Corrections or the Department of Corrections and Rehabilitation, 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 \$270,000,000 in revenue bonds, notes, or bond anticipation notes to finance the acquisition, design, and construction of approved adult local criminal justice facilities, setting aside \$20,000,000 to be awarded to Napa County, and would continuously appropriate the funds for those purposes. Because the bill would continuously appropriate funds for these purposes, it would make an appropriation. The bill would establish procedures for approving and funding these projects.

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

~~This bill would express the intent of the Legislature to enact statutory changes relating to the Budget Act of 2016.~~

Vote: majority. Appropriation: ~~no~~yes. Fiscal committee: ~~no~~yes. State-mandated local program: no.

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

1 SECTION 1. Chapter 3.132 (commencing with Section
2 15820.94) is added to Part 10b of Division 3 of Title 2 of the
3 Government Code, to read:

4
5 CHAPTER 3.132. FINANCING OF ADULT LOCAL CRIMINAL
6 JUSTICE FACILITIES - 2016
7

8 15820.94. (a) For purposes of this chapter, “participating
9 county” means a county, city and county, or regional consortium
10 of counties, within the state that has been certified to the State
11 Public Works Board (board) by the Board of State and Community
12 Corrections (BSCC) as having satisfied all of the requirements set
13 forth in this chapter for financing an adult local criminal justice
14 facility pursuant to this chapter.

15 (b) (1) For purposes of this chapter, an adult local criminal
16 justice facility may include improved housing with an emphasis
17 on expanding program and treatment space as necessary to
18 manage the adult offender population under the jurisdiction of the
19 sheriff or county department of corrections, as may be applicable,
20 consistent with the legislative intent described in Sections 17.5

1 *and 3450 of the Penal Code, to be further defined by the BSCC in*
2 *duly adopted regulations.*

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

11 *15820.940. (a) The BSCC or the Department of Corrections*
12 *and Rehabilitation (CDCR), a participating county, and the board*
13 *are authorized to acquire, design, and construct an adult local*
14 *criminal justice facility approved by the BSCC pursuant to Section*
15 *15820.945, or to acquire a site or sites owned by, or subject to a*
16 *lease or option to purchase held by, a participating county. For*
17 *the purposes of this chapter, acquisition shall include, but is not*
18 *limited to, acquisition of completed facilities through a build-to-suit*
19 *purchase. Facilities financed pursuant to this chapter may be*
20 *delivered through either a design-bid-build or a design-build*
21 *process. The ownership interest of a participating county in the*
22 *site or sites for an adult local criminal justice facility shall be*
23 *determined by the board to be adequate for purposes of its*
24 *financing in order to be eligible under this chapter.*

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

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

39 *(d) The agreement shall include a provision that the*
40 *participating county agrees to indemnify, defend, and hold*

1 *harmless the State of California for any and all claims and losses*
2 *arising out of the acquisition, design, and construction of the adult*
3 *local criminal justice facility. The agreement may also contain*
4 *additional terms and conditions that facilitate the financing by the*
5 *board.*

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

9 *(f) For purposes of compliance with the California*
10 *Environmental Quality Act (Division 13 (commencing with Section*
11 *21000) of the Public Resources Code), the board, BSCC, and the*
12 *CDCR are not a lead or responsible agency; the participating*
13 *county is the lead agency.*

14 *15820.941. Upon a participating county's receipt of responsive*
15 *construction bids or design-build proposals, or a participating*
16 *county's notification to the board of its intent to exercise a*
17 *purchase option, and after the adult local criminal justice facility*
18 *has been certified pursuant to Section 15820.94, the board and*
19 *the BSCC or the CDCR may borrow funds for project costs from*
20 *the Pooled Money Investment Account pursuant to Sections 16312*
21 *and 16313, or from any other appropriate source. In the event any*
22 *of the revenue bonds, notes, or bond anticipation notes authorized*
23 *by this chapter are not sold, the BSCC or the CDCR shall commit*
24 *a sufficient amount of its support appropriation to repay any loans*
25 *made for an approved adult local criminal justice facility.*

26 *15820.942. (a) The board may issue up to two hundred seventy*
27 *million dollars (\$270,000,000) in revenue bonds, notes, or bond*
28 *anticipation notes, pursuant to Chapter 5 (commencing with*
29 *Section 15830), to finance the acquisition, design, and construction,*
30 *including, without limitation, renovation, and a reasonable*
31 *construction reserve, of approved adult local criminal justice*
32 *facilities described in Section 15820.940, and any additional*
33 *amount authorized under Section 15849.6 to pay for the cost of*
34 *financing.*

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

1 (c) Notwithstanding Section 13340, funds derived pursuant to
2 this section and Section 15820.941 are continuously appropriated
3 for purposes of this chapter.

4 15820.943. In support of this state financing, the Legislature
5 finds and declares all of the following:

6 (a) California's current challenges in managing jail populations
7 follow decades of overcrowded and aging jails, and piecemeal,
8 erratic, and incomplete responses to dealing with these problems.
9 Reversing course will require sustainable solutions that must
10 include sound planning and implementation, and must be grounded
11 in the principle that jail resources must be well-planned and
12 employed efficiently and effectively to prevent overcrowding and
13 promote public safety through the broader use of evidence-based
14 practices and policies in the criminal justice system.

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

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

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

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

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

39 15820.944. With the consent of the board, the BSCC or the
40 CDCR and a participating county are authorized to enter into

1 leases or subleases, as lessor or lessee, for any property or
2 approved adult local criminal justice facility and are further
3 authorized to enter into contracts or other agreements for the use,
4 maintenance, and operation of the adult local criminal justice
5 facility in order to facilitate the financing authorized by this
6 chapter. In those leases, subleases, or other agreements, the
7 participating county shall agree to indemnify, defend, and hold
8 harmless the State of California for any and all claims and losses
9 accruing and resulting from or arising out of the participating
10 county's use and occupancy of the adult local criminal justice
11 facility.

12 15820.945. (a) The BSCC shall adhere to its duly adopted
13 regulations for the approval or disapproval of adult local criminal
14 justice facilities. The BSCC shall also consider cost effectiveness
15 in determining approval or disapproval. No state moneys shall be
16 encumbered in contracts let by a participating county until one of
17 the following occurs:

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

21 (2) Documents prepared by a participating county pursuant to
22 paragraph (1) of subdivision (a) of Section 22164 of the Public
23 Contract Code have been approved by the BSCC, and subsequent
24 design-build proposals have been received pursuant to that section.

25 (3) The participating county has notified the board of its intent
26 to exercise an option to purchase the completed facility pursuant
27 to Section 15820.941.

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

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

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

9 (2) *Documentation of the need for improved adult local criminal*
10 *justice facility housing with an emphasis on expanded program*
11 *and treatment space. A county shall not be required to submit a*
12 *new needs assessment if the county previously submitted a needs*
13 *assessment for a request under the financing program described*
14 *in Chapter 3.131 (commencing with Section 15820.93).*

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

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

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

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

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

30 15820.946. (a) *The participating county contribution for adult*
31 *local criminal justice facilities financed under this chapter shall*
32 *be a minimum of 10 percent of the total project costs. The BSCC*
33 *may reduce contribution requirements for participating counties*
34 *with a general population below 200,000 upon petition by a*
35 *participating county to the BSCC requesting a lower level of*
36 *contribution.*

37 (b) *The BSCC shall determine the funding and scoring criteria*
38 *consistent with the requirements of this chapter. Financing shall*
39 *be awarded only to those counties that have previously received*
40 *only a partial award or have never received an award from the*

1 state within the financing programs authorized in Chapters 3.11
2 (commencing with Section 15820.90) to 3.131 (commencing with
3 Section 15820.93), inclusive. Notwithstanding this restriction,
4 twenty million dollars (\$20,000,000) of the amount authorized in
5 Section 15820.942 shall be set aside and awarded to Napa County.
6 The funding criteria shall include, as a mandatory criterion,
7 documentation of the percentage of pretrial inmates in the county
8 jail from January 1, 2015, to December 31, 2015, inclusive, and
9 a description of the county's current risk-assessment-based-pretrial
10 release program. Funding preference shall also be given to
11 counties that are most prepared to proceed successfully with this
12 financing in a timely manner. The determination of preparedness
13 to proceed shall include the following:

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

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

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

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

1 (e) A participating county with a request resulting in any
2 increase in capacity using this financing authority shall be required
3 to certify and covenant in writing that the county is not, and will
4 not be, leasing housing capacity to any other public or private
5 entity for a period of 10 years beyond the completion date of the
6 adult local criminal justice facility.

7 (f) Any locked facility constructed or renovated with state
8 funding awarded under this program shall include space to provide
9 onsite, in-person visitation capable of meeting or surpassing the
10 minimum number of weekly visits required by state regulations for
11 persons detained in the facility.

12 (g) Any county applying for financing authority under this
13 program shall include a description of efforts to address sexual
14 abuse in its adult local criminal justice facility constructed or
15 renovated pursuant to this chapter.

16 SEC. 2. This act is a bill providing for appropriations related
17 to the Budget Bill within the meaning of subdivision (e) of Section
18 12 of Article IV of the California Constitution, has been identified
19 as related to the budget in the Budget Bill, and shall take effect
20 immediately.

21

22 SECTION 1. ~~It is the intent of the Legislature to enact statutory~~
23 ~~changes, relating to the Budget Act of 2016.~~