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BOARD OF SUPERVISORS

2011 DEC 14 A 10:06

**CORRECTIONS
STANDARDS
AUTHORITY**

Memo

To: Sheriffs Auditor/Controllers
Chair, Board of Supervisors Director, Department of Public Works
County Administrative/Executive Officers AB 900 Phase I Project Contact Persons

From: Charlene Aboytes, Field Representative

Date: December 16, 2011

Re: Proposed Title 15 Regulations

Pursuant to the Administrative Procedure Act, enclosed you will find the Notice of Proposed Action for the Adoption of Emergency Regulations for the 2007 Local Jail Construction Funding Program. The purpose of these regulations is to implement, interpret and make specific Government Code Sections 15820.90 through 15820.917 (Assembly Bill 900, Financing of County Jail Facilities).

The purpose of this notice is to announce the opening of the 45-day public comment period for these regulations. **This is a re-notice of a proposed action that we initially published in the California Regulatory Notice Register (Notice Register) on November 25, 2011. Due to technical difficulties, we were unable to receive any public comments, and as a result, we published a Notice of Decision Not to Proceed (Notice Register, December 9, 2011), terminating that prior notice. With this re-notice (published December 16, 2011), we are commencing a new notice and public hearing/comment periods.**

The Notice of Proposed Action, the text of proposed regulations and the Initial Statement of Reasons are available on the Corrections Standards Authority's (CSA) website at <http://www.cdcr.ca.gov/Divisions/Boards/CSA/index.html>.

The public comment period will close **January 23, 2012 at 5:00 p.m.** Any person may submit public comments in writing (by mail, fax or by e-mail) regarding the proposed changes. To be considered by the CSA, comments must be submitted to the CSA, County Facilities Construction Division, 600 Bercut Drive, Sacramento, CA 95811; by fax at (916) 322-8756; or by e-mail at adultfacilityconstruction@cdcr.ca.gov before the close of the comment period.

Please see the enclosed notice for further information.

**NOTICE OF PROPOSED ACTION
AMENDMENT OF REGULATIONS**

**California Code of Regulations
Title 15, Crime Prevention and Corrections
Department of Corrections and Rehabilitation
Corrections Standards Authority**

NOTICE IS HEREBY GIVEN that the Secretary of the California Department of Corrections and Rehabilitation (CDCR), pursuant to the authority granted by Government Code Sections 15820.906 and 15820.916, in order to implement, interpret and make specific Government Code Sections 15820.90 through 15820.917, proposes to: amend Sections 1700, 1706, 1712, 1714, 1730, 1731, 1740, 1747, 1747.1, 1747.5, 1748, 1751, 1752, 1753, 1754, 1756, 1760, 1766, 1767, 1768, 1770, 1772, 1776, 1778 and 1788; delete section 1757; and add Sections 1712.1, 1714.1, 1730.1, 1740.1 and 1748.5 of Title 15, California Code of Regulations, Division 1, Chapter 1, Subchapter 6, concerning local jail construction financing. **This is a re-notice of a proposed action that we initially published in the California Regulatory Notice Register (Notice Register) on November 25, 2011. Due to technical difficulties, we were unable to receive any public comments, and as a result, we published a Notice of Decision Not to Proceed (Notice Register, December 9, 2011), terminating that prior notice. With this re-notice (published December 16, 2011), we are commencing a new notice and public hearing/comment periods.**

AMENDED PUBLIC HEARING DATE:

Date and Time: February 8, 2012 at 11:00 a.m.
Place: 660 Bercut Drive, Sacramento, 95811
Purpose: To receive comments about this action.

PUBLIC COMMENT PERIOD:

The public comment period **will begin on December 16, 2011 and will close on January 30 2012 at 5:00 p.m.** The text with proposed amendments, Initial Statement of Reasons and the Notice of Proposed Action will be made available on the CSA's website at www.cdcr.ca.gov/CSA/index.html. To be considered by the CSA, comments regarding the proposed changes must be submitted to the CSA, County Facilities Construction Division, 600 Bercut Drive, Sacramento, CA 95811; by fax at (916) 327-3317; or by e-mail at adultfacilityconstruction@cdcr.ca.gov before the close of the comment period.

CONTACT PERSONS:

Please direct any inquires regarding this action to:

Charlene Aboytes, Field Representative
Corrections Standards Authority
Dept. of Corrections and Rehabilitation
600 Bercut Drive, Sacramento, CA 95811
Voice: (916) 445-5073
E-Mail: Charlene.aboytes@cdcr.ca.gov

Leslie Heller, Field Representative
Corrections Standards Authority
Dept. of Corrections and Rehabilitation
600 Bercut Drive, Sacramento, CA 95811
Voice: (916) 445-5073
E-Mail: Leslie.heller@cdcr.ca.gov

LOCAL MANDATES:

This action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement pursuant to Government Code Sections 17500-17630.

FISCAL IMPACT STATEMENT:

- Cost or savings to any state agency
There will be a cost to the state through debt service paid on the lease revenue bonds, but the CSA does not anticipate any debt services payments within the next two years.
- Other nondiscretionary cost or savings imposed on local agencies:
None. To be eligible for this voluntary funding program, counties must provide matching funds of 10% of total project costs. This will vary depending on the total funds counties request.
- Cost or savings in federal funding to the state:
None

EFFECT ON HOUSING COSTS:

The CSA has made an initial determination that the proposed action will have no significant effect on housing costs.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES:

The CSA is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS:

The CSA has initially determined that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

EFFECT ON SMALL BUSINESSES:

The CSA has determined that the proposed regulations will indirectly positively affect small businesses. Among other provisions, the Public Safety and Offender Rehabilitation Services Act of 2007 provides \$1.2 billion (in two phases) to counties for the construction or expansion of local jails. This will mean more construction and custody related jobs in the communities where this construction takes place.

ASSESSMENTS OF EFFECTS ON JOB AND/OR BUSINESS CREATION, ELIMINATION OR EXPANSION:

The CSA has determined that the proposed regulations will indirectly positively affect jobs in California. Among other provisions, the Public Safety and Offender Rehabilitation Services Act of 2007 provides \$1.2 billion (in two phases) to counties for the construction or expansion

of local jails. This will mean more construction related jobs in the communities where this construction takes place.

CONSIDERATION OF ALTERNATIVES:

The CSA must determine that no reasonable alternative considered by the CSA, or that has otherwise been identified and brought to the attention of the CSA, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons, than the proposed regulatory action. Interested persons are accordingly invited to present statements or arguments with respect to any alternatives to the changes proposed at the scheduled hearing or during the written comment period.

AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS:

The CSA has prepared, and will make available, the text and the Initial Statement of Reasons (ISOR) of the amended regulations. The rulemaking file for this regulatory action, which contains those items and all information on which the proposal is based (i.e., rulemaking file) is available to the public upon request directed to the Department's contact person. The proposed text, ISOR and the Notice of Proposed Action will also be made available on the CSA's website at www.cdcr.ca.gov/CSA/index.html.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS:

Following its preparation, a copy of the Final Statement of Reasons may be obtained from the CSA's contact person.

AVAILABILITY OF CHANGES TO PROPOSED TEXT:

After considering all timely and relevant comments received, the CSA may adopt the proposed modified regulations substantially as described in this Notice. If the CSA makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the CSA adopts the regulations as revised. Requests for copies of any modified regulation text should be directed to the contact person indicated in this Notice. The CSA will accept written comments on the modified regulations for 15 days after the date on which they are made available.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

Summary of Existing Laws:

In May 2007, Assembly Bill 900 (Chapter 7, Statutes of 2007), the Public Safety and Offender Rehabilitation Services Act of 2007 was signed into law. In April 2011, the 2011 Realignment Legislation Addressing Public Safety (AB 111, Chapter 16, Statutes of 2011) became law, followed by AB 94 (Chapter 23, Statutes of 2011), in May 2011, with additional provisions to the 2011 Realignment Legislation Addressing Public Safety. Both AB 111 and AB 94 amended the provisions in AB 900 with respect to the administration of local jail construction financing. Those requirements are now reflected in Government Code Sections 15820.90 through and 15820.917. Specifically, Sections 15820.906 and 15820.916 require the CSA to adopt regulations for the approval or disapproval of local jail facilities.

Summary of Existing Regulations:

On November 28, 2008, the 2007 Local Jail Construction Funding Program Title 15 regulations were effective. These regulations describe the CSA's responsibilities pertaining to the administration local jail construction financing. Since then, these regulations have been revised twice (regulatory actions approved November 16, 2010 and May 26, 2011. (Previously, the Board of Corrections¹ administered the County Jail Capital Expenditure Bond Acts of 1981 and 1984, the County Correctional Facility Capital Expenditure Bond Act of 1986 and the County Correctional Facility Capital Expenditure and Youth Facility Bond Act of 1988. Regulations in effect at that time were located in Title 15, California Code of Regulations, Division 1, Chapter 1, Subchapter 2.) There are no comparable federal regulations or statutes.

**TITLE 15, DIVISION 1, CHAPTER 1, SUBCHAPTER 6
2007 LOCAL JAIL CONSTRUCTION FUNDING PROGRAM**

The title of the regulations found in Title 15, Division 1, Chapter 1, Subchapter 6 has been changed to "Local Jail Construction Financing Program."

There were numerous punctuation changes throughout these regulations.

ARTICLE 1, GENERAL PROVISIONS

Section 1700, Purpose.

This regulation describes the scope of the regulations found in Title 15, California Code of Regulations, Division 1, Chapter 1, Subchapter 6. "Government Code Sections 15820.90 through 1520.918" is deleted and "Chapter 3.11 and 3.12 of Title 2, Division 3, Part 10.5 of the California Government Code" has been added.

In the Authority cited section, "and" was added before "Section 6030." In the Reference section, a comma was deleted after "15820.916" and "and" was added before "15820.917" and "and 15820.918," was deleted.

Section 1706, Definitions.

This regulation defines terms used throughout these regulations. At the request of the Department of Finance, several changes were made to more accurately describe the distribution of state reimbursements. In the following definitions, the term "financing" or "financed" replaced the terms "funds," "funded" or "funding."

- 2007 Local Jail Construction Funding Program
- Applicant
- Evaluating and rating process
- Lease-revenue bonds
- Local jail
- Match
- Needs assessment study

¹ As a result of the reorganization of California's correctional system in 2005, the Board of Corrections was renamed the Corrections Standards Authority.

- Net gain in beds
- Operational program statement
- Project
- Proposal
- Proposal evaluation criteria
- State bond funds

The term “2007 Local Jail Construction Financing Program” describes these regulations that implement and specify Chapters 3.11 and 3.12 of Title 2, Division 3, Part 10.5 of the California Government Code. The title of this construction administration program originally included the year of the implementing legislation (the Public Safety and Offender Rehabilitation Services Act of 2007). The year “2007” has been deleted.

The term “Applicant” describes those counties that are eligible for applying for financing from the Local Jail Construction Financing Program. The definition of “Applicant” has been amended to delete the year “2007” from the title of this construction financing program.

The term “Application” was added to describe the document that counties complete and submit to the Corrections Standards Authority to be assessed by factors described in Section 1740.1. This term is used throughout these regulations with respect to Phase II of the Local Jail Construction Financing Program.

The definition of “Application assessment factors” is used in the new Section 1740.1, “Phase II Application Assessment Factors.” This term was added to these regulations to describe the factors with which applications will be assessed through Phase II of the Local Jail Construction Financing Program.

The term “Assist the State in siting mental health day treatment and crisis care, and/or a continuum of care for parolees” refers to original language in AB 900 (Government Code Section 15820.917) that required CDCR to give funding preference in Phase I of the Local Jail Construction Financing Program to counties that assisted the State in siting mental health day treatment and crisis care (pursuant to Penal Code Section 3073), and/or a continuum of care for parolees. The definition was amended to add “in Phase I of the Local Jail Construction Financing Program” at the end of the sentence.

The term “Assist the State in siting reentry facilities” refers to original language in AB 900 (Government Code Section 15820.917) that required CDCR to give funding preference in Phase I of the Local Jail Construction Financing Program to counties that assisted the State in siting reentry facilities (pursuant to Penal Code Section 6270). The definition was amended to add “in Phase I of the Local Jail Construction Financing Program” at the end of the sentence.

The term “cash match” (also known as “hard match”) describes the money that is required to be applied as the county’s share of an award of financing. The definition has been amended to add “and Section 1714.1.”

The definition of “Conditional award” has been added to replace “Conditionally award state bond funds.” Both definitions are very similar; however, “Conditional award” describes the maximum amount of state reimbursement a participating county may receive through the

Local Jail Construction Financing Program (both phases) and what conditions must be met to be eligible for a conditional award. This new term focuses on the award itself, not the awarding of financing.

The definition of "Conditionally award state bond funds," has been deleted because it didn't focus on the award itself, it focused on the awarding of financing. A new definition, "Conditional Award" has been added.

The definition of "Construction bid" is being added to describe the building contractor's bid for a design-bid-build project.

"Corrections Standards Authority agreement" is the title of a specific agreement between the participating county and the Authority that sets forth standard contracting requirements for the State of California as well as other necessary information.

The term "hard match" (also known as "cash match") describes the money that is required to be applied as the county's share of an award of financing. The definition has been amended to add "and Section 1714.1."

The term "In-Kind match" (also known as "soft match") describes the cost of county-paid personnel, land or services that may be applied as a portion of the county's share of an award of financing. The definition has been modified to more accurately describe the types of funds that fit in this category. In addition, this definition has been amended to add "and Section 1714.1."

The definition of "Interim Financing" has been added to describe the loans that will reimburse participating counties for eligible construction costs through the Local Jail Construction Financing Program.

The term "Large county" describes counties with a population of greater than 700,000. The definition has been amended to add "for Phase I and January 1, 2011 for Phase II."

The term "Lease-revenue bonds" (also known as state reimbursements) describes the source of financing for local jail construction or renovation as authorized by Chapters 3.11 and 3.12 of the California Government Code. The definition has been modified to include "Title 2, Division 3, Part 10.5 of" for accuracy. The word "means" has been changed to "mean."

The term "Local jail" describes the types of county jails (II, III, and IV as defined in Titles 15 and 24, Minimum Standards for Local Detention Facilities) that are eligible to receive financing as authorized by Chapters 3.11 and 3.12 of Title 2, Division 3, Part 10.5 of the California Government Code. The definition has been amended to add "and Section 1712.1."

The term "Match" describes the local funds in the form of cash, property value, or management/administrative services contributed by a county for a state financed project as authorized by Chapters 3.11 and 3.12 of Title 2, Division 3, Part 10.5 of the California Government Code. The definition has been amended to add "and Section 1714.1."

The term "Medium county" describes counties with a population from 200,001 to 700,000. The definition has been amended to add "for Phase I and January 1, 2011 for Phase II."

The term "Needs assessment study" describes the document that contains data that validates and justifies the scope of the construction/renovation project as required by Chapters 3.11 and 3.12 of Title 2, Division 3, Part 10.5 of the California Government Code. The definition has been amended to delete the year "2007" from the title of this construction financing program.

The term "Net gain in beds" describes the number of beds being added to a county's detention system as a result of this construction financing program. The definition was amended to add "in Phase I of the" and delete the year "2007" from the title of this construction financing program.

The term "Operational program statement" describes the document, submitted early in the design process, which explains how a county intends to operate the local jail. The definition has been amended to delete the year "2007" from the title of this construction financing program.

The term "Participating county" describes a county participating in the Local Jail Construction Financing Program. References to the specific California Government Code sections have been deleted, replaced by "Chapter 3.11 or 3.12 of Title 2, Division 3, Part 10.5 of the California Government Code."

The definition of "Phase I" is being added to identify and distinguish the portions of these regulations that apply to the process and awarding of financing pursuant to Chapter 3.11 of Title 2, Division 3, Part 10.5 of the California Government Code.

The definition of "Phase II" is being added to identify and distinguish the portions of these regulations that apply to the process and awarding of financing pursuant to Chapter 3.12 of Title 2, Division 3, Part 10.5 of the California Government Code.

The definition of "Preliminary plans" is being added to describe the first set of documents submitted by the participating county in the State Public Works Board's lease-revenue bond financing process.

The term "Project" describes the facility that is to be constructed or renovated through the Local Jail Construction Financing Program. The definition has been amended to delete the year "2007" from the title of this construction financing program.

The term "Project delivery and construction agreement" is the title of a specific agreement between the participating county, State Public Works Board, CDCR and the Authority that sets forth standard contracting requirements for the State of California as well as other necessary information. This definition is being amended to add "as described in Section 1748."

The term "Proposal" describes the document that counties complete and submit to the Corrections Standards Authority to be evaluated by criteria described in Section 1740. This definition has been amended to add reference to Phase I to emphasize that the term "proposal" is used in Phase I of the Local Jail Construction Financing Program. The definition

has also been amended to delete the year "2007" from the title of this construction financing program.

The term "Proposal evaluation criteria" describes the elements used in Section 1740 to rate the proposals by a weighted point scale system. This definition has been amended to add reference to Phase I to emphasize that the term "proposal" is used in Phase I of the Local Jail Construction Financing Program. The definition has also been amended to delete the year "2007" from the title of this construction financing program.

The term "Reentry preference" refers to original language in AB 900 (Government Code Section 15820.917) that required CDCR to give funding preference in Phase I of the Local Jail Construction Financing Program to counties that assisted the State in siting reentry facilities (pursuant to Penal Code Section 6270). The definition was amended to add "in Phase I of the Local Jail Construction Financing Program." In addition, reference to Government Code Section 15820.917 has been deleted.

The term "Small county" describes counties with a population of fewer than 200,000. This definition has been amended to add "for Phase I and January 1, 2011 for Phase II."

The term "soft match" (also known as "in-kind match") describes the cost of county-paid personnel, land or services that may be applied as a portion of the county's share of an award of financing. This definition has been modified to more accurately describe the types of funds that fit in this category. In addition, this definition has been amended to add "and Section 1714.1."

"State bond financing" (also known as "lease-revenue bonds") describes the source of financing for local jail construction or renovation as authorized by Chapters 3.11 and 3.12 of the California Government Code. The definition has been modified to include "Title 2, Division 3, Part 10.5 of" for accuracy.

The term "State reimbursements" describes the payments made to the county by CDCR to reimburse the county for eligible project costs.

The definition of "Working drawings" is being added to describe the final set of documents submitted by the participating county in the State Public Works Board's lease-revenue bond financing process.

In the Note section, "and" was added before and a comma was added after "15820.917" and "and 15820.918," was deleted.

ARTICLE 2, ELIGIBILITY REQUIREMENTS

Section 1712, Eligibility Requirements.

This regulation establishes the eligibility requirements for the Phase I of the Local Jail Construction Financing Program. The title of this section has been changed to add "for Phase I" after "Requirements." (The new title will read "Eligibility Requirements for Phase I.")

In subsection (a) Phase I was added to emphasize that this section is only applicable to Phase I of the Local Jail Construction Financing Program. The definition has also been

amended to delete the year "2007" from the title of this construction financing program. In addition, the term "financing" replaced the term "funding."

In subsection (b), "funding" was deleted and "reimbursement" was added.

In subsection (c) "for state bond funding" was deleted and "for state financing" was added.

In subsection (c)(1) "for funding" was deleted.

In the Note section, references to Government Code Sections 15820.91, 15820.916 and 15820.917 have been deleted.

Section 1712.1, Eligibility Requirements for Phase II.

The new regulation establishes the eligibility requirements for Phase II of the Local Jail Construction Financing Program and was developed to explain how a county can be eligible to participate. These requirements are consistent with statute and establish conditions, when met in their entirety by the county, make them eligible for state financing under this program. It also describes what can and cannot be financed through this program. These requirements are consistent with past practice by the Authority in previous jail construction funding programs and were established to ensure conformance with statutory requirements, as well as to create parameters in response to the limited state funds available.

Section 1714, Matching Fund Requirements.

This regulation describes the matching fund requirements for counties participating in this construction program. The title of this section has been changed to add "for Phase I" after "Requirements." (The new title will read "Matching Fund Requirements for Phase I.")

In subsections (a) through (f), "Phase I" has been added. Also in subsection (a), reference to Government Code Section 15280.917 has been deleted.

In subsection (g), "directly" was added between "be" and "for."

Also in this subsection, "funded by the Authority" was deleted.

In the Note section, references to Government Code Sections 15820.916 and 15820.917 have been deleted. "And" has been added between "15820.906" and "15820.907."

Section 1714.1, Matching Fund Requirements for Phase II.

This new regulation specifically pertains to Phase II of the Local Jail Construction Financing Program and describes the matching fund requirements for counties participating in this construction program. It was developed to reflect that statutory language requires counties contribute matching funds totaling a minimum of 10 percent of the total project cost and includes the statutory option that counties below a general population of 200,000 can petition the Authority for a reduction in match. The regulation states that the 10 percent match can be any combination of cash and in-kind match.

The regulation also describes those items that can be considered cash match and in-kind match.

ARTICLE 3, APPLICATION TO PARTICIPATE IN 2007 LOCAL JAIL CONSTRUCTION FUNDING PROGRAM

The title of this article has been changed to "Application to Participate in the Local Jail Construction Financing Program. The year "2007" has been deleted from the title. In addition, the word "financing" has replaced the word "funding."

Section 1730, Proposal.

This regulation describes the requirements and elements for a proposal for the Local Jail Construction Financing Program. The title of this section has been changed to "Proposal Process for Phase I."

Subsections (a) and (b) have been amended to include "for Phase I."

Subsection (b)(2) was amended for consistency with Section 1747.5. The phrase "owned by the city" was deleted and "located within the limits of the city" was added.

In subsection (b)(7) "include identifying" has been deleted and "identify" has been added. Also in this subsection term "financing" replaced the term "funds."

In the Note section, reference to Government Code Section 15820.916 has been deleted.

Section 1730.1, Application Process for Phase II.

This new regulation specifically pertains to Phase II of the Local Jail Construction Financing Program and was developed to describe the requirements and elements for counties to apply for financing through this program. The application is required to be submitted utilizing the 2011 Local Jail Construction Financing Program – AB 900 Phase II Application Form attached to the AB 900 Phase II Construction or Expansion of County Jails, Request for Applications and approved by the Authority. The form provides a clear, concise and consistent format for the counties to record necessary information as listed in subsection (a)(1) through (5) that is essential to the assessment process because the information is used as assessment criteria (see Section 1740.1). The 2011 Local Jail Construction Financing Program – AB 900 Phase II Application Form is a single contract, specific document and does not contain rules of general application.

The 2011 Local Jail Construction Financing Program – AB 900 Phase II Application Form, dated October 6, 2011, is incorporated by reference in the regulations. The form would be impractical, cumbersome and unduly expensive to publish in the California Code of Regulations as it is a twelve (12) page, inter-active form that is to be completed by the counties electronically, printed and submitted as the project application along with other required documents as attachments. The form is reasonably available to the public, via the Authority's website at <http://www.cdcr.ca.gov/CSA/index.html> and upon request, directly from the Authority's business office located in Sacramento, CA.

Subsection (c)(1) is being added to establish the requirements for a county relinquishing a Phase I conditional award and applying for a Phase II award.

Section 1731. Needs Assessment Study.

This regulation describes how counties must document their need for financing through the Local Jail Construction Financing Program. The terms "Phase I" and "Phase II" have been added.

Section 1740. Proposal Evaluation Criteria.

This regulation describes the criteria by which proposals will be evaluated. The title of this section has been changed to add "Phase I" before "Proposal Evaluation Criteria." (The new title will read "Phase I Proposal Evaluation Criteria.")

The comma after 15820.906 was deleted, "and" was added before 15820.907 and reference to 15820.916 and 15820.917 are deleted.

The term "Phase I" was added to the first paragraph.

In the Note section, after "Authority cited:" the word "Sections" was changed to "Section," and reference to Government Code Sections 15820.916 and 15820.917 have been deleted as they are not applicable to Phase I. "And" has been added between "15820.906" and "15820.907."

Section 1740.1, Phase II Application Assessment Factors.

This new regulation describes the factors by which applications will be assessed. This regulation specifically pertains to Phase II of the Local Jail Construction Financing Program. Applications submitted by counties will be assessed to determine their eligibility for financing through this program. It reflects statutory language that requires the Authority to grant preference in the assessment process to 1) those counties that committed the largest percentage of inmates to state custody in relation to the total inmate population of CDCR in 2010 and 2) those counties that received a Phase I conditional award and wish to relinquish their conditional award and reapply for a Phase II conditional award provided that those counties agree to continue to assist the state in siting reentry facilities.

The assessment factor for cost effectiveness is referenced in Government Code Section 15820.916 as a factor for approval or disapproval of local jail facilities.

Government Code Section 15820.916 requires that in order to be eligible to receive funds through this program, counties must document their need for jail beds. The assessment factor for the documentation of need for the project was added to meet this legislative requirement.

The factor for the use of detention alternatives was included to evaluate the county's commitment to effectively relieve jail overcrowding and reduce recidivism by utilizing alternative-to-jail programs.

The assessment factor for scope of work and project impact will be based on the degree to which the county's application describes the proposed project and demonstrates the impact the project will have on the county's detention system.

The assessment factor for an administrative work plan will be based on the degree to which the county's proposal provides a clear and comprehensive plan for designing, performing and managing the proposed project that is likely to result in success.

Counties are required to safely staff and operate the constructed facility within 90 days of its completion. The assessment factor for a plan for adequate staffing of the facility was included in this regulation.

Assembly Bill 109 provided for a fundamental realignment of responsibilities for lower level offenders and adult parolees from state prisons to local jurisdictions. The assessment factor for the effects of realignment was included in this regulation.

The assessment factor for budget was included to enable the evaluators to understand how the county intends to budget for the construction project in a reasonable and cost effective manner.

Section 1747, Steps to Proceed with Construction for Design-Bid-Build Projects.

This regulation describes the requirements to be fulfilled in order to begin construction for design-bid-build projects in the Local Jail Construction Program. In subsection (a) "Prior to a participating county receiving state bond funds" was deleted.

Subsection (a)(1) was amended to add reference to Section 1730.1 of these regulations.

Subsection (a)(3) was added to show CDCR's involvement in confirming that participating counties have completed the various steps required before they can proceed with construction. The new language also describes the oversight role of the State Department of Finance and the Board.

In the new subsection (a)(4), "financing from state bond funds" was deleted.

In the new subsection (a)(5), "by the financing of state bond funds" was deleted.

In the new subsection (a)(7), "a final notice of determination on its environmental impact report" was deleted and "documentation of California Environmental Quality Act compliance" was added.

In the new subsection (a)(8), "(minimum of a 40 plus year site lease or use permit)," was deleted. Adequate control of the site is subject to a case-by-case analysis that could lead to more or less than 40 years to be deemed adequate.

Section 1747.1, Steps to Proceed with Construction for Design-Build Projects.

This regulation describes the requirements to be fulfilled in order to begin construction for design-build projects in the Local Jail Construction Program. In subsection (a) "Prior to a participating county receiving state bond financing" was deleted.

Subsection (a)(1) was amended to add reference to Section 1730.1 of these regulations.

A new subsection (a)(3) was added to show CDCR's involvement in confirming that participating counties have completed the various steps required before they can proceed

with construction. The new language also describes the oversight role of the State Department of Finance and the Board.

In the new subsection (a)(4), "financing from ...bond financing" was deleted.

In the new subsection (a)(5), "by the financing of state bond financing" was deleted.

In the new subsection (a)(7), "a final notice of determination on its environmental impact report" was deleted and "documentation of California Environmental Quality Act compliance" was added.

In the new subsection (a)(8), "(minimum of a 40 plus year site lease or use permit)," was deleted. Adequate control of the site is subject to a case-by-case analysis that could lead to more or less than 40 years to be deemed adequate.

Section 1747.5, Requirements for the Siting Agreement.

This regulation describes the roles, responsibilities and performance expectations of the participating county and the CDCR to establish a reentry facility. The title of this regulation has been changed to read "Requirements for the Siting Agreement in Phase I."

"In Phase I" was added at the beginning of subsection (a). The term "financing" replaced the term "funds" and "funding" in subsection (a).

In the Note section, "and" was added before "Section 6030". After "15820.907," "and" was deleted, a comma was deleted after 15820.915 and "and" was added.

Sections 1748, Project Delivery and Construction Agreement, 1748.5, Corrections Standards Authority Agreement, 1752, Ground Lease, 1753, Right of Entry for Construction and 1754 Facility Sublease describe the various agreements, leases and subleases that counties must enter into to participate in this lease-revenue bond financing program. Each of these agreements, leases and subleases are entered into separately with each individual county for each individual construction project and all the provisions in the documents are subject to negotiation between the parties on a case-by-case basis.

Section 1748, Requirements for the Project Delivery and Construction Agreement.

This regulation describes the elements of the project delivery and construction agreement. Subsection (a) was amended to read that this agreement will be executed after the Board establishes the scope, cost and schedule for the participating county's project.

Subsection (b)(1) and (b)(8) were deleted because they duplicate language from the project delivery and construction agreement. Subsections (b)(2), (4) and (5) and subsection (c) were deleted because these requirements reside in the CSA agreement. Although these requirements have been deleted and now appear as provisions in the project delivery and construction agreement and the CSA agreement, it should be noted that these agreements are entered into separately with each individual county for each individual construction project and all these provisions in the documents are subject to negotiation between the parties on a case-by-case basis.

Subsection (b)(7) was deleted because it duplicates language from Section 1751, General Requirements (subsection (e), and is not necessary to repeat here.

Subsection (b)(3) was deleted because the project delivery and construction agreement does not contain this detailed information. (This regulation was crafted before the project delivery and construction agreement was developed. It has been determined this information is no longer relevant.)

Subsection (b)(6) was deleted due to its vagueness. There is some information from the formal project proposal in the project delivery and construction agreement.

Section 1748.5, Corrections Standards Authority Agreement.

This regulation was added to describe the basic elements of the CSA agreement between the participating county and the Authority. This agreement is entered into separately with each individual county for each individual construction project and all these provisions in the document are subject to negotiation between the parties on a case-by-case basis.

Section 1751, General County Requirements.

This regulation describes a participating county's responsibilities as delineated in statute. Subsection (e) was amended to clarify that as a general county requirement, in all agreements, the county must indemnify the State of California. This subsection was also amended to add acquisition, design, construction, operation and maintenance to those situations that the county must indemnify the state.

Section 1752, Ground Lease.

This regulation describes the transfer of the possession and control of the property upon which the local jail facility will be constructed, from the county to CDCR. Subsection (a) has been amended to delete "In the situation involving a ground lease." "with Board consent" has been added. "only after the county has certified the site pursuant to Government Code Section 15820.906(b)(1) and" has been deleted. The remainder of this subsection was deleted because it duplicates language from the Ground Lease.

Subsection (b) has been amended to reflect that an easement is needed over adjacent county property as necessary for the project footprint.

Subsection (c) has been amended to provide a more simple description of the absolute minimum requirements for a legal description.

Subsection (d) was deleted because it is a requirement that the State is placing upon itself – the State will be requesting recordation rather than requiring the county to do the recordation.

Subsection (e) was deleted because it is a precondition to the Ground Lease and is part of the Board's determination that the site is adequate as referenced in subsection (a).

Subsection (f) was deleted because the term and termination provisions are included in the Ground Lease. Subsection (g) was deleted because it is just one of many specific requirements in the Ground Lease. Subsection (i) was deleted because this requirement is included in the Ground Lease. Although these requirements have been deleted and now appear as provisions in the Ground Lease, it should be noted that the Ground Lease is

entered into separately with each individual county for each individual construction project and all these provisions in the documents are subject to negotiation between the parties on a case-by-case basis.

Subsection (j) was deleted because it is not technically correct. The title remains with the county throughout the term of the lease. This requirement is included in the Ground Lease.

Section 1753, Right of Entry for Construction.

This regulation authorizes the participating county and their contractors to use the site that has been leased to CDCR via the above referenced ground lease. The last sentence in subsection (a) was deleted because termination language resides in the Right of Entry for Construction agreement.

Subsection (c) was deleted because this concept is addressed in Section 1751, General Requirements, subsection (e), and is not necessary to repeat here.

Section 1754, Facility Sublease.

This regulation describes the requirements to sublease the local jail facility to the county for its use, operation and maintenance. It also contains language that protects the State of California and describes the parameters of how the county may use and occupy the local jail facility. The first sentence in subsection (a) was amended to delete "Immediately after" and in its place "If" was added. At the end of the first sentence, "with Board consent" was added to reflect the Board's oversight in this process. A new sentence was added that describes, in broad terms, the content of the facility sublease.

Subsections (c)(1)(2) and (7) through (10) were deleted because these requirements reside in the Facility Sublease agreement. Although these requirements have been deleted and now appear as provisions in the Facility Sublease, it should be noted that Facility Sublease is entered into separately with each individual county for each individual construction project and all these provisions in the documents are subject to negotiation between the parties on a case-by-case basis.

With respect to subsection (c)(3), this is not a county responsibility but a responsibility of CDCR; therefore this statement was deleted. In subsection (c)(4), it is a matter of Board consent whether a county may make additions, betterments or improvements to the facility. The Board's consent will consider the abatement issue, among others. In subsection (c)(6), indemnification is addressed in Section 1751, General County Requirements.

ARTICLE 4, ADMINISTRATION OF THE PROCEEDS OF THE STATE BOND FUNDS AND PROJECT MONITORING

The title of this article has been changed. "Reimbursements" has replaced "the Proceeds of the State Bond Funds." (The new title is "Administration of Reimbursements and Project Monitoring.")

Section 1756, Disbursement of the Proceeds from the Lease-Revenue Bond Funds.

This regulation describes how state reimbursements are disbursed to participating counties. The title of this regulation was changed to reflect that participating counties are reimbursed

by the state for eligible project costs for the Local Jail Construction Financing Program. (The title will read "Disbursement of State Reimbursements.")

In subsection (b), "or application" was added after "proposal." Also, "project delivery and construction" was deleted and "CSA" was added before "agreement." Finally, "payment" was deleted and "state reimbursement" was added.

Subsection (c) was deleted because, while technically true, it is a misleading statement. There are many other activities that must take place before reimbursement to counties may occur.

In the new subsection (c) "payments from the proceeds of lease-revenue bonds" was deleted and "state reimbursements" was added. "the Board and/or" was deleted and "/or CDCR and" was added to reflect that the Authority and CDCR are the entities that may be questioning the supporting documentation.

Subsection (e) was deleted because it was unnecessary. The following subsections describe the conditions under which state reimbursements are made.

The following format changes were made: subsection (e)(1) was renumbered (d) and (e)(2) was renumbered (e).

The new subsection (d) was amended to delete the word "payment." The section was also amended to allow counties to submit for payment on a schedule mutually agreed to by the Authority and the participating county and written in the CSA agreement.

The new subsection (e) was amended to delete the word "payment." Due to the reformatting of this regulation, ";and," was deleted.

The former subsection (e)(3), now the new subsection (f), has been amended to delete "from the proceeds of lease-revenue bonds to the participating county" and add "of anticipated total state reimbursements." This subsection was also amended to reflect CSA Board action that changed the retention amount withheld from the proceeds of the lease-revenue financing from 20% to 5%. This section was also amended to add reference to the CSA agreement and to emphasize that in order to release the withheld amount, the participating county must comply with the applicable terms of the CSA agreement, project delivery and construction agreement and other agreements applicable to financing and applicable conditions and requirements of law and regulation.

The former subsection (e)(3) partially described the conditions with which counties must comply before funds withheld would be released to the participating county. Subsections (f)(1), (2), (3) and (5) were added to complete the list of conditions that participating counties must meet. Subsection (4) is one of the elements from the previous (e)(3). Finally, at the end of subsection (f)(5) "receipt and approval of the final project audit report, and final construction inspection and approval by appropriate officials." was deleted because these elements are captured in subsections (f)(2) and (3).

The former subsection (e)(3) has been amended and reformatted to (f)(4) and (5).

Section 1757, Pooled Money Investment Board.

This regulation describes the financing provided by the Pooled Money Investment Board (pursuant to statute) through the CDCR to the participating county, for the local jail project until lease-revenue bonds are available. This regulation was deleted.

Section 1760, Accounting.

This regulation describes the accounting requirements that participating counties must adhere to if awarded state financing through the Local Jail Construction Financing Program. The title of this regulation has been changed to Record Keeping and Accounting.

A new subsection (a) was added to reflect the requirement that participating counties must establish an official project file for the project. This subsection also describes the required contents of the file and that a copy of this file would be forwarded to the CDCR upon termination of the CSA agreement, marking the completion of the project. The required documents (contracts, payment of invoices, transfer of funds and other related accounting records) describe how the state reimbursements and county funds were appropriately received and distributed.

The new subsection (b) requires that the file shall be protected from fire or other damage and the new subsection (c) requires that the file be preserved for a minimum of three years after the last date on which no lease-revenue bonds are outstanding.

The former subsections (a) and (b) have been renumbered to (d) and (e) respectively. Subsections (d) and (e) were amended to delete "proceeds of lease-revenue bonds" and add "state reimbursements" and subsection (e) was amended to delete "bond funds" and add "reimbursements."

Section 1766, Monitoring of Process.

This regulation describes the project monitoring requirements of the Authority and the Board. Subsection (a) was amended to add that both CDCR and the Authority shall monitor the administration of the project.

This subsection was also amended to reflect that participating counties are not paid by the proceeds of lease-revenue bonds, but are reimbursed by the state.

Subsection (b) was amended to add the Authority and the State Department of Finance to clarify that the Board, the Authority and the Department of Finance have administrative oversight of the project.

Subsection (c) was added to require state officials' access to the project site, project files and contractors' records.

Section 1767, Completion of Project.

This regulation requires the county to construct the project in accordance with the agreements, plans and specifications as approved by the Board and the Authority. This regulation was reformatted into two subsections. Subsection (a) was amended to delete reference to the project delivery and construction agreement and add reference to the CSA agreement. The reference to plans and specifications was added after "(with respect to a design-build project)" to clarify that participating counties utilizing the design-build method of

construction must complete their projects in accordance with approved plans and specifications (as required by 1749.1) as well as the approved performance criteria or performance criteria and concept drawings. The last sentence in this section was also deleted.

Subsection (b) now contains reference to the repercussions of failure to proceed with the project on the agreed schedule and adds reference to the CSA agreement. Subsection (c) was added to require the participating county to submit a final project summary to the Authority upon completion of the project.

1768, Project Modifications.

This regulation describes the process that participating counties must follow if modifications are needed to their project. Subsection (a) was amended to delete the “project delivery and construction” and add “CSA” before “agreement.” In addition, the words “written amendment and” was deleted and in its place, the word “advance” was added.

As part of establishing a project with the Board, participating counties must develop a scope of work, a budget and a schedule for the approval of staff of the Board. These items are approved by the Board and included in the project delivery and construction agreement and the CSA agreement. The project delivery and construction agreement will not be amended after approval by the Board (hence its deletion from this regulation); however, the CSA agreement may be amended. In order for an amendment to be made to the CSA agreement, counties must obtain prior written approval of the Board and the Authority.

To assure that a project is suitable for lease-revenue bond financing, careful scrutiny is given to a project’s scope, design, configuration, cost and schedule. Once a participating county’s project is established by the Board (and all parties have signed the required agreements), any significant change to a project’s scope, design, configuration, cost and schedule must be preceded by advance approval of the Board and the Authority.

Due to changes to subsections (1), (2) and (3), the last sentence in Subsection (a) has been amended to delete “if the modifications” and add “upon any of the following events or circumstances:” to be grammatically correct.

Subsection (a)(1) was amended to accurately reflect language in the project delivery and construction agreement.

Subsection (a)(2) was added to reflect the importance of the previously approved completion date with respect to the project’s ability to be bond saleable.

In subsection (3), “Substantially alter” was deleted and “A more than minor change to” was added to reflect language in both the project delivery and construction agreement and the CSA agreement.

Subsection (4) was added because any project modification that would impact the Authority’s or the State Fire Marshal’s construction or operational regulations, or the security and fire and life safety of the facility or change the number of beds, must be reviewed and approved by those state entities and requires advance approval of the Board and the Authority.

In subsection (3), "Change the number of beds or otherwise impact the Authority construction or operations regulations." was deleted. These two issues are now included in subsection (4).

A new subsection (b) was added to require the participating county to provide written notification to the Authority of any modifications to the county's agreement for construction with its contractor.

The former subsection (b), now subsection (c), was modified to clarify when change orders are to be submitted.

In the former subsection (c), now subsection (d), "project delivery and construction" was deleted and "CSA" was added before agreement. In addition, the term "financing" replaced the term "funds" in subsection (d).

Section 1770, Audits.

This regulation describes the audit requirements that participating counties must adhere to if awarded state financing through the Local Jail Construction Financing Program. Subsection (a) was amended to require that the participating county obtain an audit performed in accordance with Government Auditing Standards, issued by the Comptroller General of the United States.

In the second sentence of subsection (a), "participating" was added in front of "county."

The third and fourth sentences in subsection (a) were reformatted into a new subsection (d).

A new subsection (b) was added to describe the auditor's final audit report and require that the final audit report be submitted to the county Board of Supervisors.

In the event that the auditor determines any findings and recommendations, a corrective action plan must be prepared. Subsection (c) was added to describe the requirements for the corrective action plan.

"CDCR" was added to the first sentence of the new subsection (d). In the second sentence, "CDCR" was added, "Board and" was deleted and "or the" was added. In addition, "the proceeds of lease-revenue bonds" was deleted and "state reimbursements" was added. Finally, "the" was deleted, "established" was added and "of the bond contract" was deleted.

The former subsection (b), now the new subsection (e) was amended to add the term "state reimbursements" and delete the term "payments."

Section 1772, Unused Proceeds of Lease-Revenue Bonds.

This regulation clarifies that counties will not receive the state reimbursement in excess of the amount of the conditional award provided by the Authority and further stipulates the process that occurs in the event a participating county does not use all the state financing that was awarded to them. The title of this regulation has been changed to "Unused Conditional Awards."

Subsection (a) was amended to add "participating" in front of "county." "the proceeds of lease-revenue bonds" was deleted and "state reimbursements" was added. The word "provided" was deleted and "approved" was added.

The first sentence in subsection (c) was moved to be the new subsection (b). This sentence was restructured for clarity. "Any proceeds of lease-revenue bonds not expended by" was deleted and replaced by "If a participating county does not fully use the amount of the conditional award." "pursuant to the approved proposals, project delivery and construction agreement or approved construction plans" was deleted. "that unused amount" and "available for redistribution" was added and "redistributed" was deleted.

Subsection (b) was moved to subsection (c). It was amended to delete "proceeds of lease-revenue bonds" and "state reimbursements" was added. The word "spent" was deleted and "made" was added. The word "payments" was deleted and "state reimbursements" was added.

All of subsection (c) was deleted because it was unnecessary; this language is in the CSA agreement.

ARTICLE 5, APPEAL PROCEDURES

Section 1776, Purpose.

This regulation describes the purpose of the regulations in this article and applies to both phases of the Local Jail Construction Financing Program. The term "or application assessment process" was added at the end of the first sentence and at the end of the last sentence. The term "evaluation or assessment" replaced the term "funding" in the last sentence.

Section 1778, Definitions.

This regulation defines terms used throughout the following regulations. In subsection (ii) of the definition of "Hearing panel," "state reimbursements" replaced "proceeds of lease-revenue bonds."

Section 1788, Request for Corrections Standards Authority Appeal Hearing.

This regulation describes the process for participating counties to request an appeal hearing. It has been amended to add "or the application assessment process."