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AB-114 Public works: building construction. (2015-2016)

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Assembly Bill No. 114

CHAPTER 14

An act to amend Sections 13332.19, 15816, 15817.1, 15820.903, 15820.913, 15820.922, 15831, 15832, and 15848 of, and to repeal Section 15770.5 of, the Government Code, relating to public works, and making an appropriation therefor, to take effect immediately, bill related to the budget.

[Approved by Governor June 24, 2015. Filed with Secretary of State June 24, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 114, Committee on Budget. Public works: building construction.

(1) Existing law, except as specified, prohibits any state agency from expending funds appropriated for design-build projects until the Department of Finance and the State Public Works Board have approved performance criteria or performance criteria and concept drawings for the project. Existing law, for these purposes, defines the term "performance criteria" to mean the information that fully describes the scope of the proposed project, as specified. Existing law, for these purposes, defines the term "concept drawings" to mean any schematic drawings or architectural renderings that are prepared, in addition to performance criteria, in the detail necessary to sufficiently describe the state's needs.

This bill would revise the definition of "performance criteria," for these purposes, to include concept drawings, as specified. The bill would additionally make conforming changes.

(2) Existing law establishes the State Public Works Board which consists of the Director of Finance, the Director of Transportation, and the Director of General Services. Existing law authorizes the Director of Transportation and the Director of General Services to appoint a deputy or assistant director in their respective departments to act in their place on the board, as specified.

This bill would repeal that authorization.

(3) Existing law requires the State Public Works Board to notify the Department of General Services whenever the revenues, rentals, or receipts from the operation of a public building that was acquired or constructed by the board are no longer required or pledged for the payment of principal or interest on any of the certificates or revenue bonds of the board. Existing law provides that thereafter, that public building is under the jurisdiction of, and operated and maintained by, the Department of General Services.

This bill would repeal this notification requirement and instead require those buildings to return to the jurisdiction of, and be operated and managed by, the state agency that had jurisdiction of the property prior to the board's financing of the public building. The bill would additionally make conforming changes.

Existing law exempts from these provisions any public buildings that are acquired by lease by the board from a state agency, for the purposes of leasing the public building back to the state agency, as specified, and public buildings constructed for lease

purchase to the University of California, the Trustees of the California State University, the Board of Governors of the California Maritime Academy, or any community college district. Existing law provides that when the revenues, rentals, or receipts from the operation of any public facility or public building are no longer required or pledged for the payment of principal or interest on the certificates or revenue bonds of the board, title to the public building vests in the Regents of the University of California, the Trustees of the California State University, the Board of Governors of the California Maritime Academy, or the community college district.

This bill would repeal these exemption and vesting provisions.

(4) Existing law, until July 1, 2015, authorizes the State Public Works Board to acquire public buildings by lease from any state agency, and to lease those public buildings back to the state agency and pledge the revenues, rentals, or receipts to the lease to secure repayment of revenue bonds, notes, or certificates issued by the board for the purpose of facilitating the financing of public buildings, as specified.

This bill would eliminate the repeal date and require the Department of Finance to report to the Legislature by June 30, 2017, on the effects of this repeal, as specified.

(5) Existing law requires all revenue bonds issued for state building construction to bear the signature of the Governor, and the facsimile countersignature of the Controller and the Treasurer, as specified. Existing law requires all interest coupons attached to each bond to bear the facsimile signature of the Treasurer, as specified. Existing law specifies that the rate of interest to be born by the bonds need not be uniform for all bonds of the same issue or series or division and provides that the rate may be determined and fixed by the State Public Works Board by resolution adopted at or after the sale of the bonds.

This bill would eliminate the requirement that all interest coupons attached to each bond bear the facsimile signature of the Treasurer and all references to interest coupons in these provisions. The bill would additionally provide that a "not to exceed" interest rate may be determined and fixed by the board by resolution adopted prior to or after the sale of the bonds.

(6) Existing law requires the highest bid received on the sale of the bonds to be determined by deducting the total amount of the premium bid, if any, from the total amount of the interest that the state would be required to pay from the date of the bonds or the last preceding interest payment date, whichever is latest, to the respective maturity date of the bonds, as specified, and requires the award to be made on the basis of the lowest net interest cost to the state. Existing law requires the Treasurer, upon receipt of a resolution of the State Public Works Board authorizing the issuance of bonds, to provide for the preparation of the bonds in accordance with the resolution. In the case of a public sale, existing law authorizes the Treasurer to sell the bonds at the time, and with the notice, determined by the Treasurer, upon sealed bids, to the bidder whose bid will result in the lowest net interest cost on account of the bonds.

This bill would instead authorize the Treasurer, for a public sale, to set forth the form and means of bids, and to sell to the bidder whose bid will result in the lowest interest cost to the state on account of the bonds. The bill would set forth the procedures the Treasurer may use to determine the lowest interest cost to the state, including the net interest cost of each bid, or the true interest cost of each bid, as defined.

(7) Existing law authorizes the Department of Corrections and Rehabilitation, participating counties, and the State Public Works Board to acquire, design, and construct local jail facilities approved by the Board of State and Community Corrections (BSCC). Existing law authorizes the State Public Works Board to issue revenue bonds, notes, or bond anticipation notes in the amounts of \$365,771,000 and \$854,229,000, in 2 phases, to finance the acquisition, design, and construction, and a reasonable construction reserve, of approved local jail facilities, as specified. Existing law authorizes the State Public Works Board to issue revenue bonds, notes, or bond anticipation notes in the amount of \$500,000,000 to finance the acquisition, design, and construction, and a reasonable construction reserve, of approved adult local criminal justice facilities, as defined. The funds derived from those revenue bonds, notes, or bond anticipation notes are continuously appropriated for the purposes described above.

This bill would decrease the authorization for revenue bonds, notes, or bond anticipation notes in the first phase from \$365,771,000 to \$340,866,000 and increase the authorization of the 2nd phase from \$854,229,000 to \$870,074,000. The bill would also increase the authorization to be used for adult local criminal justice facilities from \$500,000,000 to \$509,060,000.

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

Vote: majority Appropriation: yes Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 13332.19 of the Government Code is amended to read:

13332.19. (a) For the purposes of this section, the following definitions shall apply:

(1) "Design-build" means a construction procurement process in which both the design and construction of a project are procured from a single entity.

(2) "Design-build project" means a capital outlay project using the design-build construction procurement process.

(3) "Design-build entity" means a partnership, corporation, or other legal entity that is able to provide appropriately licensed contracting, architectural, and engineering services as needed.

(4) "Design-build solicitation package" means the performance criteria, any concept drawings, the form of contract, and all other documents and information that serve as the basis on which bids or proposals will be solicited from the design-build entities.

(5) "Design-build phase" means the period following the award of a contract to a design-build entity in which the design-build entity completes the design and construction activities necessary to fully complete the project in compliance with the terms of the contract.

(6) "Performance criteria" means the information that fully describes the scope of the proposed project and includes, but is not limited to, the size, type, and design character of the buildings and site; the required form, fit, function, operational requirements, and quality of design, materials, equipment, and workmanship; and any other information deemed necessary to sufficiently describe the state's needs. Performance criteria may include concept drawings, which include any schematic drawings or architectural renderings that are prepared in the detail necessary to sufficiently describe the state's needs.

(b) (1) Except as otherwise specified in subparagraphs (A) to (D), inclusive, of paragraph (2) funds appropriated for a design-build project shall not be expended by any state agency, including, but not limited to, the University of California, the California State University, the California Community Colleges, and the Judicial Council, until the Department of Finance and the State Public Works Board have approved performance criteria.

(2) This section shall not apply to any of the following:

(A) Amounts for acquisition of real property, in fee or any lesser interest.

(B) Amounts for equipment or minor capital outlay projects.

(C) Amounts appropriated for performance criteria.

(D) Amounts appropriated for preliminary plans, if the appropriation was made prior to January 1, 2005.

(c) Any appropriated amounts for the design-build phase of a design-build project, where funds have been expended on the design-build phase by any state agency prior to the approval of the performance criteria by the State Public Works Board, and all amounts not approved by the board under this section shall be reverted to the fund from which the appropriation was made. A design-build project for which a capital outlay appropriation is made shall not be put out to design-build solicitation until the bid package has been approved by the Department of Finance. A substantial change shall not be made to the performance criteria as approved by the board and the Department of Finance without written approval by the Department of Finance. The Department of Finance shall approve any proposed bid or proposal alternates set forth in the design-build solicitation package.

(d) The State Public Works Board may augment a design-build project in an amount of up to 20 percent of the capital outlay appropriations for the project, irrespective of whether any such appropriation has reverted. For projects authorized through multiple fund sources, including, but not limited to, general obligation bonds and lease-revenue bonds, to the extent permissible, the Department of Finance shall have full authority to determine which of the fund sources will bear all or part of an augmentation. The board shall defer all augmentations in excess of 20 percent of the amount appropriated for each design-build project until the Legislature makes additional funds available for the specific project.

(e) In addition to the powers provided by Section 15849.6, the State Public Works Board may further increase the additional amount in Section 15849.6 to include a reasonable construction reserve within the construction fund for any capital outlay project without augmenting the project. The amount of the construction reserve shall be within the 20 percent augmentation limitation. The board may use this amount to augment the project, when and if necessary, after the lease-revenue bonds are sold to ensure completion of the project.

(f) Any augmentation in excess of 10 percent of the amounts appropriated for each design-build project shall be reported to the Chairperson of the Joint Legislative Budget Committee, or his or her designee, 20 days prior to board approval, or not sooner than whatever lesser time the chairperson, or his or her designee, may in each instance determine.

(g) (1) The Department of Finance may change the administratively or legislatively approved scope for major design-build projects.

(2) If the Department of Finance changes the approved scope pursuant to paragraph (1), the department shall report the changes and associated cost implications to the Chairperson of the Joint Legislative Budget Committee, the chairpersons of the respective fiscal committees, and the legislative members of the State Public Works Board 20 days prior to the proposed board action to recognize the scope change.

(h) The Department of Finance shall report to the Chairperson of the Joint Legislative Budget Committee, the chairpersons of the respective fiscal committees, and the legislative members of the State Public Works Board 20 days prior to the proposed board approval of performance criteria for any project when it is determined that the estimated cost of the total design-build project is in excess of 20 percent of the amount recognized by the Legislature.

SEC. 2. Section 15770.5 of the Government Code is repealed.

SEC. 3. Section 15816 of the Government Code is amended to read:

15816. (a) When any public building has been acquired or constructed by the board, and the revenues, rentals, or receipts from the operation of the public building are no longer required or pledged for the payment of principal or interest on any of the certificates or revenue bonds of the board undertaken under this part, the public building shall be under the jurisdiction of, and operated and maintained by, the state agency that had jurisdiction of the property prior to the board's financing of the public building.

(b) If at any time funds are available by law to retire any certificates or revenue bonds issued to defray the cost of any public building, these funds shall be applied to the redemption of certificates or revenue bonds secured by the rentals and revenues from that public building.

SEC. 4. Section 15817.1 of the Government Code is amended to read:

15817.1. (a) Exclusively for the purpose of facilitating the financing of public buildings pursuant to this part through the issuance of revenue bonds, notes, or certificates by the board, and notwithstanding any other law, the board may acquire by lease from any state agency public buildings identified by, and under the jurisdiction or control of, the state agency, and, in that connection, the board may then lease those public buildings back to the state agency and may pledge the revenues, rentals, or receipts to the lease to secure the repayment of revenue bonds, notes, or certificates issued by the board. The board is not required to apply the proceeds of the board's bonds, notes, or certificates to acquire, design, construct, or otherwise improve the same public buildings that are leased pursuant to this section. In each case, the lease shall provide rental provisions, term, payment, security, default, remedy, and other terms or provisions as may be specified in the lease or other agreement or agreements between the board and the state agency and may provide for the substitution of other public buildings for the public buildings initially leased by the board and the state agency pursuant to this section. The public buildings that are leased pursuant to this section may be existing public buildings, as determined by the board and the state agency, and which the board and the state agency also determine to have both of the following:

(1) A fair rental value that is consistent with the principal amount of the bonds, notes, or certificates of the board authorized to be issued for the purpose of providing the financing of public buildings pursuant to this part.

(2) An economic useful life that is not shorter than the final maturity of the bonds, notes, or certificates of the board authorized to be issued for the purpose of providing the financing of public buildings pursuant to this part.

(b) These determinations by the board and the state agency pursuant to subdivision (a) shall be final and conclusive.

(c) A lease made pursuant to this section does not require the approval of the Director of General Services.

(d) The board or a state agency may utilize subdivision (a) in connection with the issuance of any revenue bonds, notes, or certificates previously authorized but not issued, or any revenue bonds, notes, or certificates authorized subsequent to the effective date of the act adding this subdivision.

(e) On or before June 30, 2017, the Department of Finance shall report to the fiscal committees of the Legislature the following regarding the removal of the July 1, 2015, inoperative date from the asset transfer authority of the board. The report shall include, but is not limited to, all of the following:

(1) The number of times the asset transfer authority has been invoked.

(2) The aggregate amount of financing secured through asset transfers.

(3) An estimate of the financing savings realized through the use of asset transfers.

SEC. 5. Section 15820.903 of the Government Code is amended to read:

15820.903. (a) The SPWB may issue up to three hundred forty million eight hundred sixty-six thousand dollars (\$340,866,000) in revenue bonds, notes, or bond anticipation notes, pursuant to Chapter 5 of Part 10b of Division 3 of Title 2 (commencing with Section 15830) to finance the acquisition, design, or construction, and a reasonable construction reserve, of approved local jail facilities described in Section 15820.901, 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 utilized to reimburse a participating county for the costs of acquisition, preliminary plans, working drawings, and construction for approved projects.

(c) Notwithstanding Section 13340, funds derived pursuant to this section and Section 15820.902 are continuously appropriated for purposes of this chapter.

(d) This section shall become inoperative on June 30, 2017, and no project may be commenced after that date; however, projects that have already commenced by that date may be completed and financed with bonds issued pursuant to this chapter.

SEC. 6. Section 15820.913 of the Government Code is amended to read:

15820.913. (a) The SPWB may issue up to eight hundred seventy million seventy-four thousand dollars (\$870,074,000) in revenue bonds, notes, or bond anticipation notes, pursuant to Chapter 5 of Part 10b of Division 3 of Title 2 (commencing with Section 15830) to finance the acquisition, design, or construction, and a reasonable construction reserve, of approved local jail facilities described in Section 15820.911, 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, preliminary plans, working drawings, and construction for approved projects.

(c) Notwithstanding Section 13340, funds derived pursuant to this section and Section 15820.912 are continuously appropriated for purposes of this chapter.

SEC. 7. Section 15820.922 of the Government Code is amended to read:

15820.922. (a) The board may issue up to five hundred nine million sixty thousand dollars (\$509,060,000) 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 15820.92, 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 15820.921 are continuously appropriated for purposes of this chapter.

SEC. 8. Section 15831 of the Government Code is amended to read:

15831. All bonds issued under this part shall bear the facsimile signature of the Governor and the facsimile countersignature of the Controller and the Treasurer, and the bonds shall be signed, countersigned, and endorsed by the officers who shall be in office on the date of issuance thereof, and each of the bonds shall bear an impress of the Great Seal of the State of California. The bonds so signed, countersigned, endorsed, and sealed, when sold, are valid although the sale thereof be made at a date or dates upon which the officers having signed, countersigned, and endorsed the bonds, or any or either of the officers, shall have ceased to be the incumbents of the offices held by them at the time of signing, countersigning, or endorsing the bonds. Each bond issued under this part, if subject to call or redemption prior to maturity, shall contain a recital to that effect.

The rate of interest to be borne by the bonds need not be uniform for all bonds of the same issue or series or maturity and a "not to exceed" interest rate may be determined and fixed by the board by resolution adopted prior to or after the sale of the bonds. The Treasurer, when authorized by resolution of the board, may sell bonds above, below, or at their par or face value.

SEC. 9. Section 15832 of the Government Code is amended to read:

15832. Upon receipt of a resolution of the board authorizing the issuance of bonds, the Treasurer shall provide for their preparation in accordance with the resolution. The bonds authorized to be issued shall be sold by the Treasurer, at public sale or at private sale, as directed by the board. In the case of public sale, (1) the bonds shall be sold by the Treasurer, at such time as

may be fixed by him or her, and upon such notice as he or she may deem advisable, upon bids submitted to the Treasurer in the form and by the means specified by the Treasurer, to the bidder whose bid will result in the lowest interest cost on account of such bonds, and (2) if no bids are received, or if the Treasurer determines that the bids are not satisfactory, the Treasurer may reject all bids received, if any, and either readvertise or sell the bonds at private sale. For purposes of this chapter, the method for determining the lowest interest cost bid shall be determined by the Treasurer and shall be limited to either the net interest cost method or the true interest cost method determined by the bids as submitted in accordance with the notice of sale. The net interest cost of each bid shall be determined by ascertaining the total amount of interest that the state would be required to pay under that bid, from the date of the bonds to the respective maturity dates of the bonds then offered for sale, at the interest rate or rates specified in the bid, less the total amount of the premium, if any, or plus the total amount of the discount, if any, offered by the bid. The bid under which the amount ascertained is the least shall be deemed to be the bid resulting in the lowest net interest cost. Under the true interest cost method, the bonds shall be awarded to the bidder submitting the lowest interest rate bid determined by the nominal interest rate that, when compounded semiannually and used to discount the debt service payments on the bonds to the date of the bonds, results in an amount equal to the price bid for the bonds, excluding interest accrued to the date of delivery.

Temporary or interim bonds, certificates, or receipts of any denomination whatever, to be signed by the Treasurer, may be issued and delivered until the definitive bonds are executed and available for delivery. Signature of the Treasurer may be by signature stamp.

SEC. 10. Section 15848 of the Government Code is amended to read:

15848. Notwithstanding Section 13340 or any other provision of law, the amount as may be necessary to pay the rent of any agency occupying space in a facility authorized to be acquired or constructed under the State Building Construction Act of 1955 or a facility leased by a state agency pursuant to a joint powers agreement in accordance with Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 is hereby appropriated each fiscal year payable from the fund in the State Treasury from which that agency derives its appropriation for support and shall become available only if the rental payments are due during a period that the state is operating without funds appropriated by the Budget Act for that fiscal year or if the amount required to pay the rental payments has not been included in the Budget Act for that fiscal year and the Department of Finance certifies to the Controller that sufficient funds are available for the support of the agency for that portion of the facility that has been provided for its use and the facility or portion thereof is available for the use and occupancy of the agency. This appropriation shall be inoperative as to any facility for which jurisdiction has been transferred pursuant to Section 15816.

SEC. 11. 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.