LAO
POLICY BRIEF

A Status Report:
Implementing AB 900's Prison Construction And Rehabilitation Initiatives

MAC TAYLOR • LEGISLATIVE ANALYST • MAY 14, 2009

On May 23, 2007, the Governor signed into law Chapter 7, Statutes of 2007 (AB 900, Solorio), in order to relieve the significant overcrowding problems facing state prisons. Specifically, AB 900 authorized a total of approximately $7.7 billion for a broad package of prison construction and rehabilitation initiatives.

Prison Construction Projects ($7.7 Billion). The measure contained a number of significant provisions to finance the construction of both state prisons and county jail space using $7.4 billion in lease-revenue bonds and a $300 million General Fund appropriation. The key components include:

- ***Infill Beds.*** The measure allocated $2.4 billion for 16,000 infill beds, defined as beds at existing state prisons that are intended to replace so-called "temporary" housing in gymnasiums, day rooms, and other public spaces in prisons.

- ***Reentry Facilities.*** Assembly Bill 900 allocated $2.6 billion to construct up to 16,000 beds at "secure reentry facilities"—with up to 500 beds each—for inmates within one year of being released from custody prior to parole.

- ***Health Facilities.*** The measure allocated about $1.1 billion to construct medical, dental, and mental health treatment or housing for inmates.

- ***Jail Beds.*** The measure allocated about $1.2 billion to help counties construct local jail facilities to help address overcrowding in these facilities. In order to receive these funds, a county must have identified a site for a reentry facility.

- ***Infrastructure.*** The measure earmarked $300 million from the General Fund to address sewage, water, and other types of infrastructure problems at existing prisons.

Rehabilitation Initiatives ($50 Million). Assembly Bill 900 requires the California Department of Corrections and Rehabilitation (CDCR) to improve and expand its drug treatment, academic education, and other rehabilitative programs for inmates and parolees. For example, the measure includes requirements to increase inmate education participation rates, reduce teacher vacancies, and conduct risk and needs assessments of inmates. In order to assist the department in these efforts, AB 900 provided a one-time General Fund appropriation of $50 million to support CDCR's rehabilitative programs.

Slow Progress in the Construction Of AB 900 Projects

Infill Bed Projects Still in Beginning Stages. In our *Analysis of the 2008-09 Budget Bill* (please see page D-138), we found that major components of AB 900's infill bed plan had changed considerably since the original plan was prepared by CDCR in January 2007. For example, we noted that the department's revised infill bed plan included more cells and fewer dormitory beds, the latter of which are used to house lower-security inmates. The revised plan also called for locating infill beds at fewer sites than previously planned. The plan continues to be revised. Currently, CDCR intends to use the $2.4 billion allocated in AB 900 to construct 8,600 infill beds—7,600 as cells and 1,000 as dormitory beds—at eight different prison sites. This total number of beds is just over half the level originally envisioned.

Since our analysis last year, the department has completed draft scope, budget, and schedule packages for three infill bed projects at three facilities. The three projects are estimated to cost a total of $627 million and will provide 2,900 beds as follows:

- 1,000 Level II dormitory beds by converting the existing El Paso de Robles Youth Correctional Facility into the Estrella Correctional Facility ($99 million).
- 950 Level IV celled beds at Kern Valley State Prison (KVSP) near Delano ($291 million).
- 950 celled reception center beds at North Kern State Prison near Delano ($237 million).

In addition, the department has outlined plans for infill bed projects at five other prison sites totaling about $1.9 billion and 5,700 beds. These projects include 1,900 Level IV celled beds at Wasco State Prison ($556 million) and 3,800 celled beds at four other institutions (950 beds at each institution, for a combined cost of about $1.3 billion). These four institutions are: California Correctional Institution (near Tehachapi), High Desert State Prison (Susanville), Deuel Vocational Institute (Tracy), and Centinela State Prison (Imperial).

Fewer Reentry Facility Beds Likely to Be Delivered. Slow progress has been made regarding the construction of reentry facilities. At this time, the department is moving forward with the conversion of the former Northern California Women's Facility (Stockton) to a reentry facility. This reentry facility will include 500 beds, serve the counties of San Joaquin, Calaveras, and Amador, and cost about $112 million. In addition, the Central Coast Reentry Facility (San Luis Obispo) has been sited and the Public Works Board (PWB) has authorized the site selection for reentry facilities in Kern, Madera, and San Bernardino counties. In order to guide the planning for reentry facilities, CDCR recently designed a 500-bed prototype facility that it estimates will cost about $160 million to construct. Based on the department's estimate, the $2.6 billion provided in AB 900 will support about half the number of reentry beds assumed in the measure.

Health Care and Treatment Space Projects Planned. Of the $1.1 billion authorized in AB 900 for health care beds and treatment space, CDCR has plans to spend about $757 million on various medical, mental health, and dental facilities. These projects include (1) the Central Health Services Building at San Quentin ($146 million), (2) six mental health bed projects—two of which the scope, budget, and schedule packages have already been approved by PWB—totaling 231 beds ($290 million), and (3) additional dental treatment space at seven prison sites ($321 million).

Few Counties Awarded Funding for Additional Jail Beds. As previously mentioned, AB 900 includes $1.2 billion in lease-revenue bonds to assist counties in constructing additional jail beds. Currently, only 11 counties had received jail funding awards from CDCR—for a combined total of $586 million and 5,284 beds—on the condition

that there is a sited reentry facility and that various other requirements are met. These counties include Amador, Calaveras, Kern, Madera, San Benito, San Bernardino, San Diego, San Joaquin, San Luis Obispo, Santa Barbara, and Yolo. According to the department, 13 other counties (such as Los Angeles and Orange) have withdrawn their application due to difficulties in determining a site for a reentry facility.

Funds for Infrastructure Projects Remain Available. At the time of this analysis, CDCR had allocated only about $69 million of the $300 million appropriated from the General Fund in AB 900 to address sewage, water, electrical, and other types of infrastructure problems at existing prisons, thus leaving a balance of about $231 million to support additional infrastructure projects. As we discussed in our *2009-10 Budget Analysis Series: Judicial and Criminal Justice*, the Legislature should consider using these funds to continue previously approved infrastructure projects, rather than appropriate additional monies from the General Fund.

In large part, the construction of the different components of AB 900 (such as the infill bed projects) has been delayed due to the need to make various technical fixes to the enacted language in AB 900. These changes were adopted as part of the February 2009 budget package.

Most of AB 900 Rehabilitation Funds Already Being Spent

As discussed above, AB 900 provided a one-time General Fund appropriation of $50 million to expand rehabilitation programs. The 2008-09 budget included about $36 million in spending from this appropriation to (1) provide substance abuse treatment for inmates and mental health services for parolees, (2) expand risk and needs assessments of offenders, and (3) provide information technology systems to make improvements in rehabilitation programs. The remaining balance of about $14 million will be spent on similar initiatives in 2009-10. The department has added the initial 2,000 increase in substance abuse slots called for under AB 900 and is pursuing other program changes.

Issues for Legislative Consideration

Based on our review of the department's efforts to implement the various components of AB 900, we have identified several issues that merit legislative consideration.

Construction Cost Estimates for Infill Beds Increasing Significantly. Last year, CDCR projected that the cost of constructing celled beds for 950 inmates and one group of support buildings was $211 million. According to the draft budget and scope packages for the first three infill bed projects, the department now estimates that the cost to construct such an infill facility at Delano will be $291 million. These higher costs are accounted for by an expansion in health care space and modifications to the housing units. In contrast, the cost of building an entire prison of 4,600 beds at KVSP a few years ago—including more costly types of beds—was $377 million. The cost per bed at KVSP was $82,000 while the cost per bed in the department's current infill bed plan is $306,000 (an increase from an estimate of $222,000 based on the plans released a year ago). Our analysis suggests that these higher cost estimates for the infill beds are unjustified and cannot be explained by the increases in labor and material costs that occurred since KVSP was built. While the department indicates that market factors have driven up the cost of the infill bed projects, it has not been able to explain in detail how such factors contributed to an almost quadrupling of costs in seven years.

So-called "soft costs" (such as architectural and engineering fees and contingencies (for unanticipated changes in costs) appear to be one of the major factors driving up the department's cost estimates for these projects. The CDCR estimates of both soft

costs and contingencies are linked by percentages to hard construction costs. As a result, any increase in hard construction costs means that soft costs and contingency costs also rise. The draft packages also include a 20 percent estimating contingency, which further increases the construction cost of a facility by 20 percent. Since CDCR has extensive experience in building the types of facilities included in the infill bed plan, our analysis indicates that this 20 percent contingency is unwarranted.

Costs to Operate New Facilities Would Be Significant. The draft planning packages for the infill bed plan facilities include estimates on the operating costs associated with the planned 8,600 infill beds. According to the department, the added annual operating costs for the eight infill bed plan sites (including personnel costs and equipment costs) would be about $334 million when fully activated. This amount is in addition to the $180 million in annual debt service for the lease revenue bonds used to construct the infill bed facilities.

The cost to operate reentry facilities will also be significant. According to the department, the added annual operating costs for the proposed reentry facility in Stockton will be about $41 million when fully activated. Based on the department's estimate, the total annual operating cost when all reentry facilities are fully activated could reach $650 million. This is in addition to the $195 million annual debt service for the lease revenue bonds used to construct these facilities. Thus, when fully implemented, the infill bed plan and reentry facilities combined could increase General Fund costs by $1.3 billion annually.

Funds Remain Available for Health Care Construction. The federal-court appointed Receiver in the *Plata v. Schwarzenegger* inmate medical care legal case is proposing an $8 billion health care construction program, which is currently the subject of pending federal court litigation. If the Legislature decides to fund all or a portion of the Receiver's construction plan, we suggest it consider taking advantage of the lease-revenue bonds authorized in AB 900 for health care construction. The CDCR has plans to spend about $757 million on various medical and mental health facilities, leaving $385 million in lease-revenue bond financing potentially available for the Receiver's construction projects. We discuss this option in our *2009-10 Budget Analysis Series: Judicial and Criminal Justice* (please see page CJ-38).

Pending Litigation Could Impact AB 900. In July 2007, a federal three-judge panel was convened to determine whether (1) prison overcrowding is the primary cause of the state's inability to provide constitutionally adequate inmate health care and (2) a prisoner release order is the only way to remedy these conditions. On February 9, 2009, the court issued a tentative ruling that no relief other than an order to release tens of thousands inmates will remedy the unconstitutional conditions in the prisons. Such a release could delay or reduce the need for some of the projects authorized in AB 900.

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This report was prepared by Nancy Paulus, and reviewed by Anthony Simbol. The Legislative Analyst's Office (LAO) is a nonpartisan office which provides fiscal and policy information and advice to the Legislature.

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