

AMENDED IN SENATE MAY 22, 2008  
AMENDED IN SENATE MAY 12, 2008  
AMENDED IN SENATE APRIL 21, 2008

**SENATE BILL**

**No. 1665**

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**Introduced by Senator Machado**

February 22, 2008

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An act to add Chapter 3.14 (commencing with Section 15820.200) to Part 10b of Division 3 of Title 2 of the Government Code, relating to prisons, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1665, as amended, Machado. Prison construction.

Existing law establishes the Department of Corrections and Rehabilitation, and charges it with various duties in regard to the custody of prisoners, including medical care. Existing law has authorized the issuance of bonds for various prison construction projects.

This bill would create the Prison Health Care Construction Program, which would be administered by the Medical Care Receiver, and would address the need to design and construct improvements to existing facilities and to design and construct health-related facilities and housing for approximately 10,000 inmates with medical or mental health needs, and supporting infrastructure and ancillary facilities at existing prison facilities statewide or at other appropriate state-owned real property, to provide the constitutionally appropriate level of health care for inmates in correctional facilities statewide.

The bill would authorize \$6,900,000,000 in revenue bonds for those purposes, and would appropriate \$100,000,000 from the General Fund

to the Department of Corrections and Rehabilitation for certain of those purposes.

The bill would make findings and declarations in connection to the Prison Health Care Construction Program.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3. Appropriation: yes. Fiscal committee: yes.  
State-mandated local program: no.

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

1 SECTION 1. Chapter 3.14 (commencing with Section  
2 15820.200) is added to Part 10b of Division 3 of Title 2 of the  
3 Government Code, to read:

4  
5 CHAPTER 3.14. PRISON HEALTH CARE CONSTRUCTION  
6 PROGRAM  
7

8 15820.200. The Legislature finds and declares all of the  
9 following:

10 (a) On February 14, 2006, the United States District Court in  
11 the case of Plata v. Schwarzenegger (No. C01-01351-TEH)  
12 suspended the exercise of authority by the Secretary of the  
13 Department of Corrections and Rehabilitation related to the  
14 administration, control, management, operation, and financing of  
15 the California prison medical health care system and vested those  
16 powers in a Medical Care Receiver appointed by the court  
17 commencing on April 17, 2006, until further order of the court.

18 (b) Those powers include assessing the suitability of existing  
19 medical care facilities and the design and construction of upgrades  
20 or replacement facilities.

21 (c) The Medical Care Receiver, in consultation with the court  
22 and the Special Master in Coleman v. Schwarzenegger (No. CIV  
23 S-90-00520-LKK-JFM), has determined that it is necessary to  
24 immediately design and construct improvements to existing  
25 facilities and to design and construct health-related facilities and  
26 housing for approximately 10,000 inmates with medical or mental  
27 health needs, and supporting infrastructure and ancillary facilities  
28 at existing prison facilities statewide or at other appropriate  
29 state-owned real property to provide the constitutionally

1 appropriate level of health care for inmates in correctional facilities  
2 statewide. It is intended that implementation of these efforts will  
3 assist the state in compliance matters related to the cases Plata v.  
4 Schwarzenegger (No. C01-01351-TEH), Coleman v.  
5 Schwarzenegger (No. CIV S-90-00520-LKK-JFM), Perez v. Tilton  
6 (No. C05-05241 JSW), and Armstrong v. Schwarzenegger (No.  
7 C94-02307-CW).

8 (d) It is necessary to amend certain statutes and authorize  
9 delivery methodologies in order for the Medical Care Receiver to  
10 immediately design and construct new facilities and upgrades at  
11 existing correctional facilities in order to improve the delivery of  
12 medical and mental health care.

13 15820.201. For the purposes of this chapter, the following  
14 definitions shall apply:

15 (a) “Act” means the State Building Construction Act of 1955  
16 (Part 10b (commencing with Section 15800) of Division 3 of Title  
17 2).

18 (b) “Board” means the State Public Works Board.

19 (c) “Department” means the Department of Corrections and  
20 Rehabilitation.

21 (d) “Health Care Expansion Program” means the program to  
22 develop health-related facilities for inmates with medical health  
23 needs and mental health needs together with dental treatment space  
24 for the inmates housed in the health-related facilities at existing  
25 prison facilities, or at other appropriate state-owned real property.

26 (e) “Health Care Improvement Program” means the program  
27 to develop health-related facilities to be designed and constructed  
28 at existing department facilities in order to immediately improve  
29 the delivery of medical and mental health care, but unrelated to  
30 the expanded capacity and facilities contemplated under the Health  
31 Care Expansion Program.

32 (f) “Health-related facilities” means state-owned facilities whose  
33 construction is administered by the Medical Care Receiver for  
34 treatment, housing, program, and administrative space for inmates  
35 with medical or mental health needs, and the infrastructure and  
36 ancillary facilities necessary to support that space. Health-related  
37 facilities are public buildings, as defined in this part.

38 (g) “Medical Care Receiver” means the person appointed by  
39 the United States District Court in the case of Plata v.

1 Schwarzenegger (No. C01-01351-TEH) to oversee management  
2 and operation of the state prison medical system.

3 (h) “Prison Health Care Construction Program” means the  
4 Health Care Expansion Program and the Health Care Improvement  
5 Program authorized by this chapter and administered by the  
6 Medical Care Receiver.

7 (i) “Project” means an individual component part or parts at an  
8 institution or other state-owned property, within a program  
9 authorized by this chapter.

10 15820.202. The purpose of this chapter is to authorize funding  
11 and financing for the Prison Health Care Construction Program  
12 and to describe the procurement methods that the Medical Care  
13 Receiver is authorized to use for implementing the Prison Health  
14 Care Construction Program.

15 15820.203. (a) In order to expedite the Prison Health Care  
16 Construction Program, and notwithstanding any other provision  
17 of law, the Medical Care Receiver may solicit proposals and enter  
18 into contracts for the study, planning, design, development,  
19 construction, rebuilding, improvement, or repair, or any  
20 combination thereof, for the Prison Health Care Construction  
21 Program based upon a value-based, competitive negotiation  
22 process.

23 (b) Solicitations or contracts authorized pursuant to this section  
24 may be executed by the Medical Care Receiver through the  
25 California Prison Health Care Receivership Corporation on behalf  
26 of the department. Entities may be selected by the Medical Care  
27 Receiver subject to the oversight of the federal court and to all of  
28 the following criteria:

29 (1) The Medical Care Receiver shall use as the primary selection  
30 criteria the demonstrated competence and qualifications for the  
31 study, planning, design, developing, construction, rebuilding,  
32 improvement, or repair, or any combination thereof, of the Prison  
33 Health Care Construction Program.

34 (2) The Medical Care Receiver shall ensure that the Prison  
35 Health Care Construction Program is delivered under contracts  
36 entered into pursuant to this section at a fair and reasonable price.

37 (3) The Medical Care Receiver shall not enter into any  
38 solicitation or contract that may result in unlawful activity,  
39 including, but not limited to, rebates or kickbacks.

1 (4) The Medical Care Receiver shall not enter into a contract  
2 that uses employees or consultants of the Medical Care Receiver  
3 when those employees or consultants have a relationship with a  
4 person or business entity seeking a contract under this section that  
5 would subject those employees to the prohibition of Section 87100  
6 if they were state or local public officials.

7 (c) The scope and cost of the projects that comprise the Prison  
8 Health Care Construction Program shall be subject to project scope  
9 and cost approval and administrative oversight by the board, as  
10 outlined in Section 13332.11 or 13332.19, as applicable, except  
11 that for the purposes of this chapter, any duties or functions to be  
12 performed by the Director of General Services under those sections  
13 shall be performed by the Medical Care Receiver. For purposes  
14 of this chapter, the availability of an augmentation for individual  
15 projects shall be calculated based on the total capital outlay  
16 appropriations contained in Sections 15820.205 and 15820.206  
17 and is not limited to 20 percent of the individual project cost  
18 allocation.

19 ~~(d) For each project under the Health Care Expansion Program,~~  
20 ~~the Medical Care Receiver shall submit a report to the Joint~~  
21 ~~Legislative Budget Committee 30 days prior to requesting project~~  
22 ~~scope and cost approval from the board. The report shall include~~  
23 ~~the project's proposed scope, location, cost, schedule, and number~~  
24 ~~of beds by security level. The Medical Care Receiver shall submit~~  
25 ~~an updated report to the Joint Legislative Budget Committee upon~~  
26 ~~requesting project approval from the board.~~

27 (d) (1) *For each project authorized in this section under the*  
28 *Prison Health Care Construction Program, at least 45 days prior*  
29 *to submission to the State Public Works Board, the Medical Care*  
30 *Receiver shall submit to the Joint Legislative Budget Committee*  
31 *information on the project's scope and costs and, when*  
32 *appropriate, documentation of preliminary plans. Documentation*  
33 *of preliminary plans shall not be required for any project in which*  
34 *the Medical Care Receiver proceeds under the authority provided*  
35 *in this section for a value-based, competitive negotiation process.*  
36 *In cases where the documentation of preliminary plans is*  
37 *determined to be appropriate, that documentation shall include*  
38 *all of the following:*

39 (A) *A preliminary plan submittal package, as defined by the*  
40 *State Administrative Manual.*

1 (B) *An estimate of the annual operating costs of the facility.*

2 (C) *A staffing plan for the operation of the facility.*

3 (D) *A plan for providing medical, mental health, and dental*  
4 *care to inmates.*

5 (E) *A plan for inmate programming at the facility, including*  
6 *education, work, and substance abuse programming.*

7 (2) *The information submitted on a project's scope and costs*  
8 *specified in paragraph (1) shall include the project's proposed*  
9 *scope, location, cost, schedule, number of beds by security level,*  
10 *and any other information provided to the board under subdivision*  
11 *(c). If the Joint Legislative Budget Committee fails to take any*  
12 *action with respect to the information and documentation*  
13 *concerning a project submitted pursuant to paragraph (1) within*  
14 *45 days after that submission, this inaction shall be deemed to be*  
15 *approval for purposes of this section, and the Medical Care*  
16 *Receiver is authorized to design, construct, or renovate prison*  
17 *housing units, support buildings, programming space, and all*  
18 *related infrastructure for each institution for which a notice has*  
19 *been approved.*

20 (e) The Medical Care Receiver may seek board approval for  
21 the first three projects under the Health Care Expansion Program,  
22 which shall constitute phase 1 of the program. Before seeking  
23 board approval for the next two projects under the Health Care  
24 Expansion Program, which shall constitute phase 2 of the program,  
25 the Medical Care Receiver shall conduct a reassessment of the  
26 inmates' mental and medical health needs to determine whether  
27 additional projects under the Health Care Expansion Program are  
28 reasonably necessary, taking into account any significant changes  
29 anticipated in the population of inmates. The Medical Care  
30 Receiver shall seek board approval for phase 2 of the program  
31 only if the Medical Care Receiver determines that those projects  
32 are reasonably necessary. Before seeking approval for any  
33 additional projects under the Health Care Expansion Program,  
34 which shall constitute phase 3 of the program, the Medical Care  
35 Receiver shall conduct another reassessment as described above  
36 and shall seek board approval for phase 3 of the program only if  
37 the Medical Care Receiver determines that those projects are  
38 reasonably necessary.

39 15820.204. For purposes of compliance with the California  
40 Environmental Quality Act (Division 13 (commencing with Section

1 21000) of the Public Resources Code), the board shall not be  
2 deemed a lead or responsible agency. However, nothing in this  
3 chapter exempts the department or the Medical Care Receiver from  
4 the requirements of that division.

5 15820.205. (a) The board may issue up to six billion nine  
6 hundred million dollars (\$6,900,000,000) in revenue bonds,  
7 negotiable notes, or negotiable bond anticipation notes pursuant  
8 to this part, to finance the design and construction and a reasonable  
9 construction reserve for the Prison Health Care Construction  
10 Program as that amount may be augmented in accordance with  
11 this chapter and other additional amounts authorized in Section  
12 15849.6.

13 (b) The department may borrow funds for project costs that are  
14 part of the Prison Health Care Construction Program from the  
15 Pooled Money Investment Account pursuant to Sections 16312  
16 and 16313 or from any other appropriate source. In the event any  
17 of the revenue bonds, notes, or bond anticipation notes authorized  
18 by this chapter are not sold, the department shall commit a  
19 sufficient amount of its support appropriation to repay any loans  
20 made from the Pooled Money Investment Account for the Prison  
21 Health Care Construction Program.

22 (c) The department and the board shall execute and deliver any  
23 and all leases, contracts, agreements, or other documents necessary  
24 for the sale of bonds or other financing for the Prison Health Care  
25 Construction Program.

26 (d) All project-related capital expenditures for the Prison Health  
27 Care Construction Program made on or after the date this chapter  
28 is enacted that are paid from an appropriation that supports the  
29 operations of the Medical Care Receiver shall be deemed a loan  
30 from the General Fund to the department and shall be repaid with  
31 the proceeds of bonds or notes authorized pursuant to this chapter.  
32 In addition, the above-described General Fund loan or loans may  
33 be repaid by a loan from the Pooled Money Investment Account,  
34 as provided in subdivision (b).

35 (e) Notwithstanding Section 13340, funds derived pursuant to  
36 this section are continuously appropriated for purposes of this  
37 chapter.

38 (f) Any action or proceeding challenging the validity of the  
39 bonds or notes or financing contracts authorized by this chapter  
40 shall be brought in accordance with and within the time specified

1 under Chapter 9 (commencing with Section 860) of Title 10 of  
2 Part 2 of the Code of Civil Procedure.

3 15820.206. The amount of one hundred million dollars  
4 (\$100,000,000) is hereby appropriated from the General Fund to  
5 the department for use by the Medical Care Receiver in  
6 implementing the Health Care Improvement Program. This  
7 appropriation may be allocated by the board, on a  
8 project-by-project basis, for those costs that the board determines,  
9 in its sole discretion, may not lend themselves to lease revenue  
10 bond financing. Notwithstanding Section 13340, funds authorized  
11 by this section are continuously appropriated for purposes of this  
12 chapter.

13 15820.207. (a) All plans and specifications for the Prison  
14 Health Care Construction Program shall comply with all applicable  
15 building codes for state-owned facilities.

16 (b) The Medical Care Receiver is authorized to use any method  
17 to secure the completion of a project and the payment of trade  
18 contractors, material suppliers, and other parties contracting to  
19 provide goods or services to the project, including, but not limited  
20 to, requiring payment and performance bonds, default insurance,  
21 letters of credit, or escrow accounts for any project within the  
22 Prison Health Care Construction Program.

23 (c) The provisions of Chapter 1 (commencing with Section  
24 1720) of Part 7 of Division 2 of the Labor Code shall apply to all  
25 public works contracts entered into for the Prison Health Care  
26 Construction Program.

27 (d) Except as provided in this section and Sections 15820.201  
28 to 15820.205, inclusive, private sector methods may be used to  
29 administer the Prison Health Care Construction Program projects.  
30 Specifically, notwithstanding subdivision (a) of Section 15815,  
31 the design, procurement and contracting, construction, and insuring  
32 of the Prison Health Care Construction Program projects, and  
33 resolution of any disputes related thereto, shall not be subject to  
34 the State Contract Act (Chapter 1 (commencing with Section  
35 10100) of Part 2 of Division 2 of the Public Contract Code), or to  
36 any other provision of state law governing public procurement or  
37 public works projects.

38 (e) The provisions of Chapter 11 (commencing with Section  
39 7000) of Title 7 of Part 3 of the Penal Code shall not apply to any  
40 projects in the Prison Health Care Construction Program.



1 15820.208. (a) Health-related facilities qualifying as “hospital  
2 buildings” under Section 129905 of the Health and Safety Code  
3 are state facilities and not subject to the jurisdiction of a local  
4 building department. The Medical Care Receiver shall have the  
5 same rights and responsibilities as the department as set forth in  
6 Section 129905 of the Health and Safety Code with respect to any  
7 hospital building, as defined in that section, for purposes of the  
8 Prison Health Care Construction Program.

9 (b) Health-related facilities may be classified as any of the  
10 categories of “health facility” under Chapter 2 (commencing with  
11 Section 1250) of Division 2 of the Health and Safety Code  
12 appropriate to the particular facility. Health-related facilities that  
13 would qualify as “acute psychiatric hospitals” under Section 1250  
14 of the Health and Safety Code shall not require prior approval of  
15 plans and specifications for construction by any state entity other  
16 than the board.

17 SEC. 2. This act is an urgency statute necessary for the  
18 immediate preservation of the public peace, health, or safety within  
19 the meaning of Article IV of the Constitution and shall go into  
20 immediate effect. The facts constituting the necessity are:

21 Immediate commencement of the design and construction under  
22 the Prison Health Care Construction Program at existing prisons  
23 or at other appropriate state-owned real property is necessary to  
24 make available additional treatment space and housing for inmates  
25 and to assist the state in complying with matters relating to the  
26 cases *Plata v. Schwarzenegger* (No. C01-01351-TEH), *Coleman*  
27 *v. Schwarzenegger* (No. CIV S-90-00520-LKK-JFM), *Perez v.*  
28 *Tilton* (No. C05-05241 JSW), and *Armstrong v. Schwarzenegger*  
29 (No. C94-02307-CW). Therefore, it is necessary that this act take  
30 effect immediately.