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AB-2249 State parks. (2015-2016)

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Assembly Bill No. 2249

CHAPTER 413

An act to amend Sections 5080.05 and 5080.18 of, and to add Section 5080.22 to, the Public Resources Code, relating to state parks.

[Approved by Governor September 21, 2016. Filed with Secretary of State September 21, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2249, Cooley. State parks.

Existing law establishes the Department of Parks and Recreation and vests the department with the control of the state park system. Existing law authorizes the Director of Parks and Recreation to negotiate or renegotiate a concession contract within state parks if specified conditions exist and generally requires that a concession contract within state parks for a period of more than 2 years be awarded to the best responsible bidder.

This bill would enact the California Heritage Protection Act, which would make various changes to the process for negotiating or renegotiating state parks concession contracts. The bill would modify the definition of a best responsible bidder to include that the bidder, among other things, will operate the concession in a manner that protects the state's trademark and service mark interest in the names associated with a state park venue and its historical, cultural, and recreational resources.

This bill would prohibit a concession contract from providing a contracting party with a trademark or service mark interest in the name or names associated with a state park venue, or its historical, cultural, or recreational resources, and would prohibit a concession contract from serving as the basis for any legal claim that the contracting party has that interest. The bill would declare that these provisions do not constitute a change in, but are declaratory of, existing law. The bill would prohibit a bidder who makes that legal claim or assertion, and a bidder who a court has determined has made that legal claim or assertion with respect to a state or federal park venue without reasonable cause and in bad faith, from being awarded a concession contract within state parks. The bill would require the department to adopt regulations to provide a bidder who is denied a contract award based on these reasons with written notice and an opportunity to rebut the basis of the contract denial at a formal hearing. The bill would render a provision of a concession contract that, on and after January 1, 2017, provides a contracting party with a trademark or service mark interest in the name or names associated with a state park venue, or its historical, cultural, or recreational resources, void and unenforceable.

This bill would require a concession contract to contain provisions requiring the concessionaire to forfeit the right to bid on future state park concession contracts if the concessionaire makes the above-described legal claim or assertion and requiring a concessionaire to be responsible for the state's attorney fees, costs, and expenses if the concessionaire in bad faith files a federal or state trademark or service mark application for a trademark or service mark that incorporates or implies association with a state park venue, or its historical, cultural, or recreational resources, and the state files a successful opposition or cancellation of the trademark or service mark application.

This bill would incorporate additional changes to Section 5080.18 of the Public Resources Code proposed by SB 1473 to be operative only if SB 1473 and this bill are chaptered and become effective on or before January 1, 2017, and this bill is chaptered last.

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

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

SECTION 1. This act shall be known, and may be cited, as the California Heritage Protection Act.

SEC. 2. The Legislature finds and declares all of the following:

(a) National, state, and regional parks serve the public interest, benefit California, and very often reflect historic significance that earlier generations of Californians have attached to these sites.

(b) Yosemite National Park, located in California, is one of the most important and majestic parks in the United States and is filled with historic landmarks built several decades ago. The historic nature of these landmarks as California heirloom destinations is demonstrated by topographic maps of the Yosemite Valley, dating back to the 1950s, which include these venues.

(c) The Ahwahnee Hotel was built in the 1920s with a backdrop of Half Dome. It was placed on the National Register of Historic Places in 1977.

(d) Curry Village, in the Yosemite Valley, is named after a San Francisco Bay area couple who established a summer camp there in 1899. It was placed on the National Register of Historic Places in 1979.

(e) The Wawona Hotel is a complex of seven buildings in the southwest corner of Yosemite National Park. The first building, then named "Long White," was originally constructed in 1876. The main hotel building originally opened in 1879. It was placed on the National Register of Historic Places in 1975.

(f) California state park venues are held in public trust for the people of California. A legal claim by an individual to have a trademark right to a name or names associated with a venue within a state park derogates the interests of California and the shared history of Californians, and it is indicative of a lack of the individual's fitness to serve as a steward of the state's cherished cultural heritage and places.

(g) An agreement entered into by any California state agency that compromises the interests of Californians is "ultra vires" and therefore beyond that agency's legal authority to enter.

(h) It is important that the Legislature clarify that an awarded concession contract within California's state parks does not give the concessionaire a trademark right to the name or names associated with a state park venue or its historical, cultural, or recreational resources. Furthermore, a concessionaire who makes a legal claim to have that trademark right should be disqualified from further consideration as a bidder.

SEC. 3. Section 5080.05 of the Public Resources Code is amended to read:

5080.05. (a) Except as provided in Section 5080.16, all contracts authorizing occupancy of any portion of the state park system for a period of more than two years shall be awarded to the best responsible bidder.

(b) "Best responsible bidder" means the bidder, as determined by specific standards established by the department, that, as determined by the department, will operate the concession (1) consistent with the contract, (2) in a manner fully compatible with, and complementary to, the characteristics, features, and theme of the unit in which the concession will be operated, (3) in the best interests of the state and public, and (4) in a manner that protects the state's trademark and service mark rights in the names associated with a state park venue and its historical, cultural, and recreational resources. For purposes of this section, a bidder who would be subject to subdivision (b) of Section 5080.22 is not a best responsible bidder.

SEC. 4. Section 5080.18 of the Public Resources Code is amended to read:

5080.18. A concession contract entered into pursuant to this article shall contain, but is not limited to, all of the following provisions:

(a) (1) The maximum term shall be 10 years, except that a term of more than 10 years may be provided if the director determines that the longer term is necessary to allow the concessionaire to amortize improvements made by the concessionaire, to facilitate the full utilization of a structure that is scheduled by the department for replacement or redevelopment, or to serve the best interests of the state. The term shall not exceed 20 years without specific authorization by statute. Except as provided in Section 5080.16, all renewals of concession contracts pursuant to this paragraph shall be subject to competitive bidding requirements.

(2) The maximum term shall be 50 years if the concession contract is for the construction, development, and operation of multiple-unit lodging facilities equipped with full amenities, including plumbing and electrical, that is anticipated to exceed an initial cost of one million five hundred thousand dollars (\$1,500,000) in capital improvements in order to begin operation. The term for a concession contract described in this paragraph shall not exceed 50 years without specific authorization by statute. Except as provided in Section 5080.16, all renewals of concession contracts pursuant to this paragraph shall be subject to competitive bidding requirements.

(3) Notwithstanding paragraph (1), a concession agreement at Will Rogers State Beach executed prior to December 31, 1997, including, but not limited to, an agreement signed pursuant to Section 25907 of the Government Code, may be extended to exceed 20 years in total length without specific authorization by statute, upon approval by the director and pursuant to a determination by the director that the longer term is necessary to allow the concessionaire to amortize improvements made by the concessionaire that are anticipated to exceed one million five hundred thousand dollars (\$1,500,000) in capital improvements. Any extensions granted pursuant to this paragraph shall not be for more than 15 years.

(b) Every concessionaire shall submit to the department all sales and use tax returns and, at the request of the department, provide an annual financial statement prepared or audited by a certified public accountant.

(c) Every concession shall be subject to audit by the department.

(d) A performance bond shall be obtained and maintained by the concessionaire. In lieu of a bond, the concessionaire may substitute a deposit of funds acceptable to the department. Interest on the deposit shall accrue to the concessionaire.

(e) The concessionaire shall obtain and maintain in force at all times a policy of liability insurance in an amount adequate for the nature and extent of public usage of the concession and naming the state as an additional insured.

(f) Any discrimination by the concessionaire or his or her agents or employees against any person because of the marital status or ancestry of that person or any characteristic listed or defined in Section 11135 of the Government Code is prohibited.

(g) To be effective, any modification of the concession contract shall be evidenced in writing.

(h) Whenever a concession contract is terminated for substantial breach, there shall be no obligation on the part of the state to purchase any improvements made by the concessionaire.

(i) If a concessionaire makes a legal claim or assertion to have a trademark or service mark interest in violation of subdivision (a) of Section 5080.22, the concessionaire shall forfeit the right to bid on future state park concession contracts to the extent authorized by federal law.

(j) If a current or former concessionaire in bad faith files a federal or state trademark or service mark application for a trademark or service mark that incorporates or implies an association with a state park venue, or its historical, cultural, or recreational resources, and the state files a successful opposition or cancellation with respect to that trademark or service mark application, the concessionaire shall be responsible for the state's attorney fees, costs, and expenses associated with that opposition or cancellation.

SEC. 4.5. Section 5080.18 of the Public Resources Code is amended to read:

5080.18. A concession contract entered into pursuant to this article shall contain, but is not limited to, all of the following provisions:

(a) (1) The maximum term shall be 10 years, except that a term of more than 10 years may be provided if the director determines that the longer term is necessary to allow the concessionaire to amortize improvements made by the concessionaire, to facilitate the full utilization of a structure that is scheduled by the department for replacement or redevelopment, or to serve the best interests of the state. The term shall not exceed 20 years without specific authorization by statute. Except as provided in Section 5080.16, all renewals of concession contracts pursuant to this paragraph shall be subject to competitive bidding requirements.

(2) The maximum term shall be 50 years if the concession contract is for the construction, development, and operation of multiple-unit lodging facilities equipped with full amenities, including plumbing and electrical, that is anticipated to exceed an initial cost of one million five hundred thousand dollars (\$1,500,000) in capital improvements in order to begin operation. The term for a concession contract described in this paragraph shall not exceed 50 years without specific authorization by statute. Except as provided in Section 5080.16, all renewals of concession contracts pursuant to this paragraph shall be subject to competitive bidding requirements.

(3) Notwithstanding paragraph (1), a concession agreement at Will Rogers State Beach may be awarded for up to 50 years in length without specific authorization by statute, upon approval by the director and pursuant to a determination by the

director that the longer term is necessary to allow the concessionaire to amortize improvements made by the concessionaire that are anticipated to exceed one million five hundred thousand dollars (\$1,500,000) in capital improvements.

(b) Every concessionaire shall submit to the department all sales and use tax returns and, at the request of the department, provide an annual financial statement prepared or audited by a certified public accountant.

(c) Every concession shall be subject to audit by the department.

(d) A performance bond shall be obtained and maintained by the concessionaire. In lieu of a bond, the concessionaire may substitute a deposit of funds acceptable to the department. Interest on the deposit shall accrue to the concessionaire.

(e) The concessionaire shall obtain and maintain in force at all times a policy of liability insurance in an amount adequate for the nature and extent of public usage of the concession and naming the state as an additional insured.

(f) Any discrimination by the concessionaire or his or her agents or employees against any person because of the marital status or ancestry of that person or any characteristic listed or defined in Section 11135 of the Government Code is prohibited.

(g) To be effective, any modification of the concession contract shall be evidenced in writing.

(h) Whenever a concession contract is terminated for substantial breach, there shall be no obligation on the part of the state to purchase any improvements made by the concessionaire.

(i) If a concessionaire makes a legal claim or assertion to have a trademark or service mark interest in violation of subdivision (a) of Section 5080.22, the concessionaire shall forfeit the right to bid on future state park concession contracts to the extent authorized by federal law.

(j) If a current or former concessionaire in bad faith files a federal or state trademark or service mark application for a trademark or service mark that incorporates or implies an association with a state park venue, or its historical, cultural, or recreational resources, and the state files a successful opposition or cancellation with respect to that trademark or service mark application, the concessionaire shall be responsible for the state's attorney fees, costs, and expenses associated with that opposition or cancellation.

SEC. 5. Section 5080.22 is added to the Public Resources Code, to read:

5080.22. (a) (1) A concession contract awarded pursuant to Section 5080.05, 5080.16, or 5080.23 shall not provide the contracting party with a trademark or service mark interest in the name or names associated with a state park venue, or its historical, cultural, or recreational resources, and shall not serve as the basis for any legal claim that the contracting party has that interest.

(2) This subdivision does not constitute a change in, but is declaratory of, existing law.

(b) To the extent consistent with federal law, a bidder shall not be awarded a contract pursuant to Section 5080.05, 5080.16, or 5080.23 if either of the following applies:

(1) The bidder has made a legal claim or assertion to have a trademark or service mark interest in violation of subdivision (a).

(2) A court has determined that the bidder has made a legal claim or assertion to have a trademark or service mark interest in the name or names associated with a state or federal park venue, or its historical, cultural, or recreational resources, without reasonable cause and in bad faith.

(c) The department shall adopt regulations to provide a bidder who is denied a contract award based on subdivision (b) with written notice of that denial and an opportunity to rebut the basis for the contract denial at a formal hearing.

(d) Commencing January 1, 2017, a provision of a contract or other agreement entered into pursuant to Section 5080.05, 5080.16, or 5080.23 that violates subdivision (a) shall be void and unenforceable.

(e) This section shall not be construed to impact a contracting party's valid trademark or service mark rights that were held before the concession contract was awarded.

SEC. 6. Section 4.5 of this bill incorporates amendments to Section 5080.18 of the Public Resources Code proposed by both this bill and Senate Bill 1473. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2017, (2) each bill amends Section 5080.18 of the Public Resources Code, and (3) this bill is enacted after Senate Bill 1473, in which case Section 4 of this bill shall not become operative.