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SB-1111 State parks: operating agreements. (2015-2016)

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Senate Bill No. 1111

CHAPTER 540

An act to amend Sections 5003.17 and 5080.40 of, to amend and repeal Section 5080.42 of, and to add Article 1.5 (commencing with Section 520) to Chapter 1 of Division 1 of, the Public Resources Code, relating to state parks.

[Approved by Governor September 23, 2016. Filed with Secretary of State September 23, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1111, Pavley. State parks: operating agreements.

Existing law vests control of the state park system with the Department of Parks and Recreation and authorizes the department to enter into an operating agreement with a qualified nonprofit organization for the development, improvement, restoration, care, maintenance, administration, or operation of a unit or units, or portion of a unit, of the state park system, subject to certain conditions and requirements.

This bill would repeal those provisions on January 1, 2025. The bill would also provide that an operating agreement may not eliminate jobs maintained under a memorandum of understanding.

This bill would authorize the department to enter into a statewide agreement with a park support organization, as defined, to facilitate the implementation of reforms recommended by the Parks Forward Commission and to develop and secure expertise, services, resources, and projects that are not readily available to the state park system for specified purposes relating to the funding, visitation, use, facilities, and staffing of state parks, as provided. The bill would require the department to take specified actions relating to the development and implementation of such an agreement and would authorize the Director of Parks and Recreation and the Director of Finance, or their designees, to serve as ex officio, nonvoting members of the park support organization's board of directors. The bill would require the department, if it enters into an agreement with a park support organization, to collaborate with the park support organization to develop an annual list of strategic initiatives and projects that are statewide priorities for the state park system and the park support organization and that the park support organization will undertake in partnership with the department. The bill would authorize the department to enter into supplementary agreements and leases, as provided, with the park support organization and receive donations of projects, services, and funds to be used for the support of the state park system, subject to the review and approval of the statewide agreement or substantial amendment of such an agreement by the Director of Finance.

Existing law authorizes the department to lease, for any use, all or any portion of any parcel of real property acquired for state park system purposes, if the director finds that the use would be compatible with the use of the real property as a unit or part of a unit and with the sound management and conservation of resources within the unit, but prohibits the department from entering into a lease that extends beyond 10 years unless certain conditions for the review and approval of a proposed lease as part of the annual budget process are met. Existing law imposes similar review and approval requirements of operating leases or agreements that are expected to generate over \$500,000 in annual gross revenues.

This bill would revise certain of those conditions for the review and approval of a proposed lease or operating lease or agreement by the Joint Legislative Budget Committee, as specified. The bill would make those conditions applicable only to operating leases or agreements that are expected to generate over \$1,000,000 in annual gross revenues.

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

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

SECTION 1. The Legislature finds and declares all of the following:

- (a) Changes to existing law are necessary to facilitate implementation of reforms that have been recommended by the Parks Forward Commission to ensure vibrant and sustainable parks for all Californians and for present and future generations.
- (b) There are numerous existing local, regional, and statewide park support organizations collaborating with the Department of Parks and Recreation, managing and operating state parks, and providing resources and services to state parks.
- (c) The Department of Parks and Recreation needs to establish a new strategic partnership with a nonprofit park support organization that would complement and support the work of the department and other park partners by bringing new resources, expertise, and flexibility to assist the department in accomplishing its mission.

SEC. 2. Article 1.5 (commencing with Section 520) is added to Chapter 1 of Division 1 of the Public Resources Code, to read:

Article 1.5. Park Support Organization

520. For purposes of this article, the following terms shall have the following meanings:

- (a) "Park support organization" means a nonprofit organization that meets all of the following requirements:

- (1) Is exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code.
- (2) Is established for the principal purposes of increasing park access and visitation in ways that serve all Californians and visitors to the state, promoting healthy lifestyles and community engagement, and supporting the protection and stewardship of California's natural, cultural, and historical lands, sites, and resources.
- (3) Complies with the Supervision of Trustees and Fundraisers for Charitable Purposes Act (Article 7 (commencing with Section 12580) of Chapter 6 of Part 2 of Division 3 of Title 2 of the Government Code).

- (b) "Priority list" means the annual list of strategic initiatives and projects developed by the department and the park support organization pursuant to Section 523.

521. (a) The department may enter into a statewide agreement with a park support organization to facilitate the implementation of reforms recommended by the Parks Forward Commission and to develop and secure expertise, services, resources, and projects that are not readily available to the state park system, for all of the following purposes:

- (1) To develop and engage new sources of public and private funding for the state park system, including philanthropic sources and enterprise and revenue generation activities, where appropriate.
- (2) To support marketing and communications activities that promote the programs, amenities, and resources of the state park system, the department, and its partners.
- (3) To support projects and programs that facilitate park access and visitation and enhance educational opportunities, particularly among younger and more diverse audiences.
- (4) To promote the health and well-being of the state's residents.
- (5) To establish or improve, and support the completion of projects that establish or improve, state park visitor amenities and facilities.
- (6) To recruit more diverse staffing and improve capacity for state park programs.
- (7) To advance the protection and stewardship of natural, cultural, and historic lands, sites, and resources.

- (b) If the department enters into an agreement with a park support organization, the park support organization, in consultation with the department, shall do all of the following:

- (1) Communicate and coordinate with park agencies, partners, friends, and volunteers to ensure that activities undertaken pursuant to the agreement complement, support, facilitate, and amplify ongoing partnerships, programs, and projects in support

of the state park system.

(2) Engage with public agencies and organizations that manage, operate, and support other parks and protected lands in the state.

522. The director and the Director of Finance, or their respective designees, may serve as ex officio, nonvoting members of the park support organization's board of directors in order to provide for effective communication and coordination of efforts between the departments and the park support organization.

522.5. The park support organization is not a state agency or state body.

523. (a) If the department enters into an agreement with a park support organization pursuant to Section 521, the department and the park support organization shall collaborate to develop an annual list of strategic initiatives and projects that are statewide priorities for the state park system and for the park support organization and that the park support organization will undertake in partnership with the department.

(b) (1) Any initiative or project included on the priority list shall be consistent with the purposes specified in subdivision (a) of Section 521.

(2) For the first three years of an agreement entered into pursuant to subdivision (a) of Section 521, the park support organization and the department shall prioritize a limited subset of focus areas and projects from the list of purposes specified in subdivision (a) of Section 521, consistent with paragraph (2) of subdivision (b) of Section 521.

(c) Any initiative or project included on the priority list shall be consistent with Sections 5001.2 and 5019.53 regarding protection of the natural, scenic, cultural, and ecological values of the state park system.

(d) The department shall post a copy of the priority list on its Internet Web site, and shall provide copies of the list to the chairpersons of the Senate Committee on Budget and Fiscal Review, the Assembly Committee on Budget, the Senate Committee on Natural Resources and Water, and the Assembly Committee on Water, Parks, and Wildlife.

524. (a) In order to advance the purposes described in subdivision (a) of Section 521, an agreement between the department and the park support organization pursuant to Section 521 shall, at a minimum, include and specify all of the following:

(1) Clear goals and objectives.

(2) Any commitments of oversight, staffing, and coordination that are needed to accomplish the goals and objectives.

(3) The process for developing the priority list pursuant to Section 523.

(b) (1) The department may develop and enter into supplementary agreements with the park support organization for the purposes of securing any expertise, capacity, or financial resources that may be needed to identify, plan, develop, or implement strategic initiatives and projects on the priority list. Any such agreement may include, but not be limited to, grants, contracts, memoranda of understanding, staff-sharing agreements, leases, and rights of entry onto state park property.

(2) Notwithstanding Section 5003.17, the department may lease to the park support organization, for a minimum rental of one dollar (\$1.00) per year, real property that is owned by the state and included in any unit of the state park system, if the lease agreement requires the park support organization to construct, or provide for the construction of, a structure or improvement on the leased property and specifies that title to the structure or improvement shall vest in the state at the expiration of the lease term. The agreement may provide for the means or method by which title to the structure or improvement shall vest in the state before the expiration of that term.

(3) Notwithstanding Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code, any agreements entered into by the department pursuant to this subdivision shall be under the control of the department and shall not be subject to any advertising or competitive bidding requirements applicable to public works or other public projects.

(4) Any construction, alteration, demolition, installation, or repair work undertaken by or on behalf of a park support organization on property owned by the state pursuant to this section shall constitute a public work for purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(c) The director may receive donations of projects, services, and funds from the park support organization as authorized by Sections 5005, 5009.1, 5009.2, and 5009.3.

(d) The Director of Finance shall have 60 days to review and approve or disapprove any agreement or any substantial amendment to such an agreement, proposed under subdivision (a). Upon approval of the agreement, or substantial amendment,

the director may accept donations and enter into supplementary agreements as authorized under subdivisions (b) and (c).

525. Nothing in this article shall be interpreted as a limitation on the ability of the park support organization to apply for, receive, or administer grants, loans, or other funds from public entities other than the department. The park support organization shall consult with the department if the department may also be applying for those funds.

SEC. 3. Section 5003.17 of the Public Resources Code is amended to read:

5003.17. (a) The department may lease, for any use, all or any portion of any parcel of real property acquired for state park system purposes, if the director finds that the use would be compatible with the use of the real property as a unit or part of a unit and with the sound management and conservation of resources within the unit.

(b) Rent shall be based on the fair market value of the property when used for the purpose for which it is leased. All rent shall be deposited pursuant to Section 5010.

(c) The lease term shall not exceed 10 years. All leases are subject to the approval of the Department of General Services.

(d) No lease shall be entered into that extends beyond the 10-year period unless both of the following conditions are met:

(1) At least 30 days' prior written notice of the proposed lease, including a copy of the proposed lease, has been provided by the director to the Joint Legislative Budget Committee.

(2) The director has included with the proposed lease sufficient documentation to enable the Joint Legislative Budget Committee to determine whether the lease conforms to the requirements of this article and to evaluate fully all terms upon which the lease is proposed to be let, including the amount of the rent and other revenues that may be generated under the lease.

SEC. 4. Section 5080.40 of the Public Resources Code is amended to read:

5080.40. (a) No operating lease or agreement shall be entered into, or amended, pursuant to this article unless at least 30 days' written notice and a copy of the proposed operating lease or agreement, or amendment, has been provided by the director to the Joint Legislative Budget Committee.

(b) The director shall include with the proposed lease or agreement or amendment sufficient documentation to enable the Joint Legislative Budget Committee to evaluate fully the estimated operating costs and revenues and all terms upon which the lease or agreement or amendment is proposed to be entered into. Specifically, the documentation shall identify both of the following:

(1) Any anticipated costs to the state for operation or development under the lease or agreement or amendment and the anticipated state share of total operation and development costs.

(2) The anticipated annual revenues, net of operation costs, for the unit and the state's share of these revenues.

(c) Leases or agreements shall be exempt from subdivisions (a) and (b) when all of the following conditions exist:

(1) The lease or agreement involves operation of only a portion of a unit of the state park system.

(2) The term of the lease or agreement is for a period of 20 years or less.

(3) The lease's or agreement's impact to the unit, including concessions revenue, will not exceed one million dollars (\$1,000,000) in annual gross revenue generated on the property.

(4) The lease or agreement involves no significant change in state operational funding or staffing levels, and does not include present or future state expenditures for development of the unit.

(d) Amendments to existing leases or agreements shall be exempt from subdivisions (a) and (b) when all of the following conditions exist:

(1) The amendment involves operation of only a portion of a unit of the state park system.

(2) The amendment's impact to the unit will not exceed one million dollars (\$1,000,000) in annual gross revenue generated on the property.

(3) The amendment involves no significant change in state operational funding or staffing levels, and does not include present or future state expenditures for development of the unit.

SEC. 5. Section 5080.42 of the Public Resources Code is amended to read:

5080.42. (a) Notwithstanding any other provision of this article, the department may enter into an operating agreement with a qualified nonprofit organization for the development, improvement, restoration, care, maintenance, administration, or operation of a unit or units, or portion of a unit, of the state park system, as agreed to by the director. The prohibition on park closures, pursuant to subdivision (a) of Section 541.5, does not limit the department's authority to enter into an operating agreement pursuant to this section, as provided in subdivision (e) of Section 541.5. The department may only enter into an operating agreement that involves the operation of the entirety of a park unit for no more than 20 park units. An operating agreement with a qualified nonprofit organization shall include, but shall not be limited to, the following conditions:

(1) The district superintendent for the department shall provide liaison with the department, the nonprofit organization, and the public.

(2) The nonprofit organization shall annually submit a written report to the department regarding its operating activities during the prior year and shall make copies of the report available to the public upon request. The report shall be available on the Internet Web sites of both the department and the nonprofit organization. The report shall include a full accounting of all revenues and expenditures for each unit of the state park system that the nonprofit organization operates pursuant to an operating agreement.

(3) (A) Except as provided in subparagraph (B), all revenues that the qualified nonprofit organization receives from a unit shall be expended only for the care, maintenance, operation, administration, improvement, or development of the unit. The qualified nonprofit organization may additionally contribute in-kind services and funds raised from outside entities for the care, maintenance, operation, administration, improvement, or development of the unit.

(B) If the qualified nonprofit organization determines that the revenues it has received from a unit are in excess of the revenues that are needed for the care, maintenance, operation, administration, improvement, or development of that unit, and that these funds are not already specified for or committed to specific purposes pursuant to an existing agreement or contract restricting the use of those funds, the qualified nonprofit organization may dedicate those excess revenues to another state park unit for that unit's care, maintenance, operation, administration, improvement, or development.

(4) General Fund moneys shall not be provided to a nonprofit organization to subsidize the operation or maintenance of a park unit. This paragraph applies to state parks, the full operation of which are turned over to a nonprofit organization, but does not apply to or preclude the department from entering into agreements with nonprofit organizations to operate a portion of a state park unit, or from entering into comanagement agreements with nonprofit organizations that involve the sharing of operational and financial responsibilities for the park unit and that have the effect of reducing state costs. This paragraph does not apply to park entrance fees, concession revenues, or any other revenues generated within a park operated by a nonprofit organization pursuant to this section.

(5) Jobs maintained under a memorandum of understanding between the state and the represented bargaining units shall not be eliminated pursuant to the agreement and shall continue to be state employment.

(b) An operating agreement entered into pursuant to subdivision (a) shall honor the existing term of a current concession contract for the state park unit subject to the operating agreement.

(c) An operating agreement entered into pursuant to subdivision (a) shall specify the duties that the nonprofit organization shall be responsible for carrying out relative to management and protection of natural, historical, and cultural resources, and shall identify those management duties that shall continue to be conducted by the department, so that all core operations of the park are delineated. Scientific, architectural, and engineering functions that require special expertise or professional training shall only be conducted by or under the supervision of qualified persons with applicable expertise or training and subject to oversight by the department.

(d) This section does not supersede the requirements of Section 5019.53 regarding the protection of natural, scenic, cultural, and ecological values.

(e) The nonprofit organization and the district superintendent for the department shall, following submittal of the annual report pursuant to subdivision (a), hold a joint public meeting for discussion of the report.

(f) If the department intends to enter into an operating agreement for the development, improvement, restoration, care, maintenance, administration, or operation of a unit or units, or a portion of a unit, the department shall notify the Member of the Legislature in whose district the unit is located, the Chair of the Senate Committee on Natural Resources and Water, the Chair of the Assembly Committee on Water, Parks, and Wildlife, and the chairs of the Assembly and Senate budget committees of that intention. The notification shall include estimated operating costs and revenues and core duties and responsibilities that are likely to be assigned to the nonprofit organization and the department.

(g) For purposes of this section, a qualified nonprofit organization is an organization that is all of the following:

(1) An organization that is exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code.

(2) An organization that has as its principal purpose and activity to provide visitor services in state parks, facilitate public access to park resources, improve park facilities, provide interpretive and educational services, or provide direct protection or stewardship of natural, cultural, or historical lands, or resources.

(3) An organization that is in compliance with the Supervision of Trustees and Fundraisers for Charitable Purposes Act (Article 7 (commencing with Section 12580) of Chapter 6 of Part 2 of Division 3 of Title 2 of the Government Code).

(h) (1) Notwithstanding Section 10231.5 of the Government Code, the department shall provide a report to the Legislature, on a biennial basis, of the status of operating agreements it has entered into pursuant to this section. The report shall include a list of units of the state park system with operating agreements, discussion of the management and operations of each unit subject to an operating agreement, an accounting of the revenues and expenditures incurred under each operating agreement, and an assessment of the benefit to the state from operating agreements entered into pursuant to this section.

(2) A report submitted pursuant to paragraph (1) shall be submitted in compliance with Section 9795 of the Government Code.

(i) This section shall remain in effect until January 1, 2025, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2025, deletes or extends that date.