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CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2249

Introduced by Assembly Members Cooley, Bigelow, and Gray
(Coauthors: Assembly Members Achadjian, Arambula, Bloom,
Brown, Dababneh, Dodd, Eggman, Cristina Garcia, Gatto,
Gipson, Levine, Obernolte, Olsen, Patterson, Salas, and Wagner)
(Coauthors: Senators Allen, Hertzberg, Hueso, Jackson, Pavley, Vidak,
and Wolk)

February 18, 2016

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.

LEGISLATIVE COUNSEL'S DIGEST

AB 2249, as amended, 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, commencing January 1, 2017, 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.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

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

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

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

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

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

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

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

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

32 (g) An agreement entered into by any California state agency
33 that compromises the interests of Californians is “ultra vires” and
34 therefore beyond that agency’s legal authority to enter.

35 (h) It is important that the Legislature clarify that an awarded
36 concession contract within California’s state parks does not give
37 the concessionaire a trademark right to the name or names
38 associated with a state park venue or its historical, cultural, or

1 recreational resources. Furthermore, a concessionaire who makes
2 a legal claim to have that trademark right should be disqualified
3 from further consideration as a bidder.

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

6 5080.05. (a) Except as provided in Section 5080.16, all
7 contracts authorizing occupancy of any portion of the state park
8 system for a period of more than two years shall be awarded to
9 the best responsible bidder.

10 (b) “Best responsible bidder” means the bidder, as determined
11 by specific standards established by the department, that, as
12 determined by the department, will operate the concession (1)
13 consistent with the contract, (2) in a manner fully compatible with,
14 and complimentary to, the characteristics, features, and theme of
15 the unit in which the concession will be operated, (3) in the best
16 interests of the state and public, and (4) in a manner that protects
17 the state’s trademark and service mark rights in the names
18 associated with a state park venue and its historical, cultural, and
19 recreational resources. For purposes of this section, a bidder who
20 would be subject to subdivision (b) of Section 5080.22 is not a
21 best responsible bidder.

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

24 5080.18. A concession contract entered into pursuant to this
25 article shall contain, but is not limited to, all of the following
26 provisions:

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

37 (2) The maximum term shall be 50 years if the concession
38 contract is for the construction, development, and operation of
39 multiple-unit lodging facilities equipped with full amenities,
40 including plumbing and electrical, that is anticipated to exceed an

1 initial cost of one million five hundred thousand dollars
2 (\$1,500,000) in capital improvements in order to begin operation.
3 The term for a concession contract described in this paragraph
4 shall not exceed 50 years without specific authorization by statute.
5 Except as provided in Section 5080.16, all renewals of concession
6 contracts pursuant to this paragraph shall be subject to competitive
7 bidding requirements.

8 (3) Notwithstanding paragraph (1), a concession agreement at
9 Will Rogers State Beach executed prior to December 31, 1997,
10 including, but not limited to, an agreement signed pursuant to
11 Section 25907 of the Government Code, may be extended to exceed
12 20 years in total length without specific authorization by statute,
13 upon approval by the director and pursuant to a determination by
14 the director that the longer term is necessary to allow the
15 concessionaire to amortize improvements made by the
16 concessionaire that are anticipated to exceed one million five
17 hundred thousand dollars (\$1,500,000) in capital improvements.
18 Any extensions granted pursuant to this paragraph shall not be for
19 more than 15 years.

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

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

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

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

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

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

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

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

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

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

20 5080.22. (a) ~~Commencing January 1, 2017, a~~(1) A concession
21 contract awarded pursuant to Section 5080.05, 5080.16, or 5080.23
22 shall not provide the contracting party with a trademark or service
23 mark interest in the name or names associated with a state park
24 venue, or its historical, cultural, or recreational resources, and shall
25 not serve as the basis for any legal claim that the contracting party
26 has that interest.

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

29 (b) To the extent consistent with federal law, a bidder shall not
30 be awarded a contract pursuant to Section 5080.05, 5080.16, or
31 5080.23 if either of the following apply:

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

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

39 (c) The department shall adopt regulations to provide a bidder
40 who is denied a contract award based on subdivision (b) with

1 written notice of that denial and an opportunity to rebut the basis
2 for the contract denial at a formal hearing.

3 (d) ~~A-Commencing January 1, 2017, a~~ provision of a contract
4 or other agreement entered into pursuant to Section 5080.05,
5 5080.16, or 5080.23 that violates subdivision (a) shall be void and
6 unenforceable.

7 (e) This section shall not be construed to impact a contracting
8 party's valid trademark or service mark rights that were held before
9 the concession contract was awarded. ~~Subdivision (a) does not~~
10 ~~constitute a change in, but is declaratory of, existing law.~~