

AMENDED IN ASSEMBLY APRIL 10, 2013

AMENDED IN ASSEMBLY MARCH 21, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 594

Introduced by Assembly Member Hueso Committee on Water, Parks and Wildlife (Assembly Members Rendon (Chair), Allen, Bigelow, Blumenfeld, Bocanegra, Dahle, Fong, Frazier, Beth Gaines, Gatto, Patterson, and Yamada)

(Principal coauthor: Senator Hueso)

February 20, 2013

An act to amend Sections 541.5, 5007, 5010.6, and 5080.42 of the Public Resources Code, relating to state parks.

LEGISLATIVE COUNSEL'S DIGEST

AB 594, as amended, ~~Hueso~~ *Committee on Water, Parks and Wildlife*. State parks: operating agreements: park closures.

(1) Existing law requires the Department of Parks and Recreation to achieve any required budget reductions by closing, partially closing, and reducing services at selected units of the state park system.

This bill would instead state that it is the intent of the Legislature that the department consistently operate the state park system, as specified. This bill would state that it is the intent of the Legislature, if budget reductions necessitate changes to the continued operation of state park units, that the department achieve any required budget reductions by implementing efficiencies and increasing revenue collection or reducing services and that full park closures only be considered as a last option, as provided. The bill would require, for any park units proposed for closure on or after July 1, 2014, that the department document and

publicly disclose, among other things, the methodology used to evaluate and select the park units proposed for closure.

Existing law requires the department to select park units for closure based on certain factors, including factors related to rate of visitation and proximity to other closed park units.

This bill would require that the rate of visitation be measured not only based on the raw number of visitations to the park unit, but also to the extent to which the total capacity of the park unit is used. The bill would eliminate the factor relating to significant operational efficiencies to be gained from closing a unit based on its proximity to other closed park units. In addition, the bill would add additional factors for consideration, including the extent to which closure of a unit would increase public safety hazards or impair the state's ability to protect iconic natural and historical resources.

The bill would require the State Parks and Recreation Commission to hold a public hearing on any park unit closures that are proposed by the department on or after July 1, 2014.

(2) Existing law prohibits the department from closing or proposing to close a state park in the 2012–2013 or 2013–2014 fiscal year. Existing law authorizes the department to enter into an operating agreement with a qualified nonprofit organization for the purposes of operating the entirety of a park unit, as identified by the director of the department, to the extent the operating agreement would enable the department to avoid closure of a unit or units of the state park system that may otherwise be subject to closure.

This bill would provide that the prohibition to close, or propose to close, a state park in the 2012–13 or 2013–14 fiscal year does not limit or affect the department's authority to enter into an operating agreement during the 2012–13 or 2013–14 fiscal year, for purposes of the operation of the entirety of a state park, as agreed to by the director, during the 2012–13 or 2013–14 fiscal year.

(3) Existing law establishes the State Parks Revenue Incentive Subaccount in the State Parks and Recreation Fund. Existing law continuously appropriates moneys in the account to the department to create incentives for projects that are consistent with the mission of the department and generate revenue, as provided.

This bill would specify that projects referred to above include, but are not limited to, capitol outlay projects.

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. Section 541.5 of the Public Resources Code is
2 amended to read:

3 541.5. (a) The department shall not close, or propose to close,
4 a state park in the 2012–13 or 2013–14 fiscal year. The commission
5 and the department shall recommend all necessary steps to establish
6 a sustainable funding strategy for the department to the Legislature
7 on or before January 1, 2015.

8 (b) There is hereby appropriated twenty million five hundred
9 thousand dollars (\$20,500,000) to the department from the State
10 Parks and Recreation Fund, which shall be available for
11 encumbrance for the 2012–13 and 2013–14 fiscal years, to be
12 expended as follows:

13 (1) Ten million dollars (\$10,000,000) shall be available to
14 provide for matching funds pursuant to subdivision (c).

15 (2) Ten million dollars (\$10,000,000) shall be available for the
16 department to direct funds to parks that remain at risk of closure
17 or that will keep parks open during the 2012–13 and 2013–14 fiscal
18 years. Priority may be given to parks subject to a donor or operating
19 agreement or other contractual arrangement with the department.

20 (3) Up to five hundred thousand dollars (\$500,000) shall be
21 available for the department to pay for ongoing audits and
22 investigations as directed by the Joint Legislative Audit Committee,
23 the office of the Attorney General, the Department of Finance, or
24 other state agency.

25 (c) The department shall match on a dollar-for-dollar basis all
26 financial contributions contributed by a donor pursuant to an
27 agreement for the 2012–13 fiscal year for which the department
28 received funds as of July 31, 2013, and for agreements entered
29 into in the 2013–14 fiscal year. These matching funds shall be
30 used exclusively in the park unit subject to those agreements.

31 (d) The department shall notify the Joint Legislative Budget
32 Committee in writing not less than 30 days prior to the expenditure
33 of funds under this section of the funding that shall be expended,
34 the manner of the expenditure, and the recipient of the expenditure.

35 (e) The prohibition to close, or propose to close, a state park in
36 the 2012–13 or 2013–14 fiscal year, pursuant to paragraph (a),
37 does not limit or affect the department’s authority to enter into an
38 operating agreement, pursuant to Section 5080.42, during the

1 2012–13 or 2013–14 fiscal year, for purposes of the operation of
2 the entirety of a state park during the 2012–13 or 2013–14 fiscal
3 year.

4 SEC. 2. Section 5007 of the Public Resources Code is amended
5 to read:

6 5007. (a) It is the intent of the Legislature that the department
7 consistently operate the state park system to preserve public access
8 and provide protection of natural, cultural, and historic resources.
9 If budget reductions necessitate changes to the continued operation
10 of state park units, it is the intent of the Legislature that the
11 department achieve required budget reductions by implementing
12 efficiencies and increasing revenue collection, or reducing services
13 at selected units of the state park system, and that full park closures
14 only be considered as a last option to address required budget
15 reductions after all other feasible alternatives, including, but not
16 limited to, entering into operating agreements with qualified
17 nonprofit entities and local governments have been explored.

18 (b) For any park unit proposed for closure on or after July 1,
19 2014, the department shall document and publicly disclose the
20 methodology, rationale, and scoring system used to evaluate and
21 select park units proposed for closure, and shall select any units
22 proposed to be closed based solely on all of the following factors:

23 (1) The relative statewide significance of each park unit,
24 preserving to the extent possible, parks identified in the
25 department's documents including "Outstanding and
26 Representative Parks," the "California State History Plan," and
27 the "California State Parks Survey of 1928."

28 (2) The rate of visitation to each unit, to minimize impacts to
29 visitation in the state park system. Visitation shall be measured
30 not only based on the raw number of visitations to the unit, but
31 also to the extent that the total capacity of the unit is used.

32 (3) (A) The estimated net savings from closing each unit, to
33 maximize savings to the state park system.

34 (B) For purposes of this subdivision, "net savings" means the
35 estimated costs of operation for the unit less the unit's projected
36 revenues and less the costs of maintaining the unit after it is closed.

37 (4) The feasibility of physically closing each unit.

38 (5) The existence of, or potential for, partnerships that can help
39 support each unit, including public and nonprofit partners and
40 concessions.

1 (6) Significant and costly infrastructure deficiencies affecting
2 key systems at each unit so that continued operation of the unit is
3 less cost effective relative to other units.

4 (7) Recent or funded infrastructure investments at a unit.

5 (8) Necessary but unfunded capital investments at a unit.

6 (9) Deed restrictions and grant requirements applicable to each
7 unit.

8 (10) The extent to which there are substantial dedicated funds
9 for the support of the unit that are not appropriated from the
10 General Fund.

11 (11) The extent to which the closure of a park unit would impact
12 local and regional economies, or disproportionately impact one
13 region of the state over another.

14 (12) The extent to which the closure of a park unit would limit
15 availability of facilities that are compliant with the Americans with
16 Disabilities Act of 1990 and subsequent amendments to the act.

17 (13) The extent to which closure of a park unit would impair
18 firefighter access to water resources or otherwise increase fire risk.

19 (14) The extent to which closure of a park unit would increase
20 public safety hazards or impair the state's ability to protect iconic
21 natural and historical resources.

22 (c) The commission shall hold a public hearing on any park unit
23 closures that are proposed by the department on or after July 1,
24 2014, and information gathered at the hearing shall be considered
25 by the department before any ~~final decisions~~ *decision* regarding
26 ~~proposed the proposed closure of a park unit-closures.~~

27 (d) Notwithstanding Division 3.6 (commencing with Section
28 810) of Title 1 of the Government Code, a public entity or a public
29 employee is not liable for injury or damage caused by a condition
30 of public property located in, or injury or damage otherwise
31 occurring in, or arising out of an activity in, a state park system
32 unit that is designated as closed by the department pursuant to
33 subdivision (a), except for conduct that constitutes gross negligence
34 or is wanton or reckless. This immunity shall apply notwithstanding
35 the fact that the public has access, whether invited or uninvited,
36 to the state park system unit, and notwithstanding that the
37 department may take actions such as patrols, inspections,
38 maintenance, and repairs necessary to protect the state park system
39 unit facilities and resources from deterioration, damage, or
40 destruction. This immunity shall apply only to units of the state

1 park system that are designated as closed pursuant to subdivision
2 (a) and shall not apply to units that are partially closed or subject
3 to service reductions but not closure. The closed units shall be
4 maintained in a list by the department and the list shall be made
5 publicly available and posted on the department's Internet Web
6 site. The list shall include the date the unit is considered closed.
7 The immunity provided by this subdivision does not limit any
8 other immunity or immunities available to a public entity or a
9 public employee. The governmental immunity provided in this
10 section does not apply to a third party or entity that has reopened
11 a park listed as closed pursuant to subdivision (a). The immunity
12 shall continue to apply to the state.

13 SEC. 3. Section 5010.6 of the Public Resources Code is
14 amended to read:

15 5010.6. (a) For purposes of this section, "subaccount" means
16 the State Parks Revenue Incentive Subaccount created pursuant
17 to this section.

18 (b) The State Parks Revenue Incentive Subaccount is hereby
19 created within the State Parks and Recreation Fund and the
20 Controller shall annually transfer fifteen million three hundred
21 forty thousand dollars (\$15,340,000) from the State Parks and
22 Recreation Fund to the subaccount.

23 (c) Notwithstanding Section 13340 of the Government Code,
24 the funds in the subaccount are hereby continuously appropriated
25 to the department to create incentives for projects, including, but
26 not limited to, capitol outlay projects, that are consistent with the
27 mission of the department and that generate revenue, except the
28 department shall not expend from the subaccount more than eleven
29 million dollars (\$11,000,000) annually pursuant to Section 5003.

30 (d) The Office of State Audits and Evaluations shall review the
31 activities funded from the subaccount pursuant to subdivision (c)
32 to ensure appropriate internal controls are in place. The department
33 shall reimburse the Office of State Audits and Evaluations from
34 the subaccount for any costs related to the review.

35 (e) The revenue generated from projects funded by the
36 subaccount shall be deposited in the subaccount and are
37 continuously appropriated for expenditure by the department in
38 accordance with the following:

1 (1) At least 50 percent of the revenue generated shall be
2 expended in the district of the department that earned that revenue,
3 as an incentive for revenue generation.

4 (2) The remaining revenue may be expended by the department
5 pursuant to subdivision (c), including, but not limited to, for
6 expenditure pursuant to Section 5003.

7 (f) The funds in the subaccount shall be available for
8 encumbrance and expenditure until June 30, 2014, and for
9 liquidation until June 30, 2016.

10 (g) This section shall become inoperative on June 30, 2016,
11 and, as of January 1, 2017, is repealed, unless a later enacted
12 statute, that becomes operative on or before January 1, 2017,
13 deletes or extends the dates on which it becomes inoperative and
14 is repealed.

15 SEC. 4. Section 5080.42 of the Public Resources Code is
16 amended to read:

17 5080.42. (a) Notwithstanding any other provision of this
18 article, the department may enter into an operating agreement with
19 a qualified nonprofit organization for the development,
20 improvement, restoration, care, maintenance, administration, or
21 operation of a unit or units, or portion of a unit, of the state park
22 system, as agreed to by the director. If the department enters into
23 an operating agreement that involves the operation of the entirety
24 of a park unit, that agreement may be entered into pursuant to this
25 section only to the extent that the agreement would enable the
26 department to avoid closure of a unit or units of the state park
27 system that may otherwise be subject to closure. The prohibition
28 on park closures, pursuant to subdivision (a) of Section 541.5, does
29 not limit the department's authority to enter into an operating
30 agreement pursuant to this section, as provided in subdivision (e)
31 of Section 541.5. The department may only enter into an operating
32 agreement that involves the operation of the entirety of a park unit
33 for no more than 20 park units. An operating agreement with a
34 qualified nonprofit organization shall include, but shall not be
35 limited to, the following conditions:

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

39 (2) The nonprofit organization shall annually submit a written
40 report to the department regarding its operating activities during

1 the prior year and shall make copies of the report available to the
2 public upon request. The report shall be available on the Internet
3 Web sites of both the department and the nonprofit organization.
4 The report shall include a full accounting of all revenues and
5 expenditures for each unit of the state park system that the
6 nonprofit organization operates pursuant to an operating agreement.

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

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

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

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

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

12 (d) This section does not supersede the requirements of Section
13 5019.53 regarding the protection of natural, scenic, cultural, and
14 ecological values.

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

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

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

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

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

39 (3) An organization that is in compliance with the Supervision
40 of Trustees and Fundraisers for Charitable Purposes Act, Article

1 7 (commencing with Section 12580) of Chapter 6 of Part 2 of
2 Division 3 of Title 2 of the Government Code.

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

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

16 (i) This section shall remain in effect only until January 1, 2019,
17 and as of that date is repealed, unless a later enacted statute, that
18 is enacted before January 1, 2019, deletes or extends that date.