

Assembly Bill No. 594

CHAPTER 407

An act to amend Sections 541.5, 5007, 5010.6, 5010.7, and 5080.42 of the Public Resources Code, relating to state parks, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 2013. Filed with
Secretary of State September 28, 2013.]

LEGISLATIVE COUNSEL'S DIGEST

AB 594, 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 solely on certain factors, including factors related to rate of visitation and proximity to other closed park units.

This bill would, among other things, require that the rate of visitation be measured not only based on the raw number of visitations to the park unit, but also the extent to which the total capacity of the park unit is used. The bill would eliminate proximity to other closed park units as a factor for closure. 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 2012–13 or 2013–14 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, capital outlay projects.

(4) Existing law requires the department to develop a revenue generation program as an essential component of a long-term sustainable park funding strategy. Existing law requires the incremental revenue generated by the revenue generation program to be deposited into the State Parks and Recreation Fund and transferred to the California State Park Enterprise Fund, as provided, once revenue targets have been met and the excess revenue is identified. Existing law further requires the department to allocate 50% of the total amount of revenues deposited into the California State Park Enterprise Fund, generated by a park district to that district if the amount of revenues generated exceeds the targeted revenue amount prescribed in the revenue generation program and requires the department to use 50% of the funds deposited into the California State Park Enterprise Fund for specific purposes.

This bill would instead require that the incremental revenue generated by the program that is to be deposited into the State Parks and Recreation Fund be transferred instead to the State Parks Revenue Incentive Subaccount, rather than the California State Park Enterprise Fund, and would retain the same requirements for the allocation to a district and use of the revenues as described above. The bill would require the department to report to the Legislature, commencing on July 1, 2014, and annually on or before each July 1 thereafter, on the revenue distributed to each district.

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

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

SECTION 1. Section 541.5 of the Public Resources Code is amended to read:

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

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

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

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

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

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

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

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

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

5007. (a) It is the intent of the Legislature that the department consistently operate the state park system to preserve public access and provide protection of natural, cultural, and historic resources. If budget reductions necessitate changes to the continued operation of state park units, it is the intent of the Legislature that the department achieve required budget reductions by implementing efficiencies and increasing revenue collection, or reducing services at selected units of the state park system, and that full park closures only be considered as a last option to address required budget reductions after all other feasible alternatives, including, but not limited to,

entering into operating agreements with qualified nonprofit entities and local governments have been explored.

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

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

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

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

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

(4) The feasibility of physically closing each unit.

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

(6) Significant operational efficiencies to be gained by closing a unit.

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

(8) Recent or funded infrastructure investments at a unit.

(9) Necessary but unfunded capital investments at a unit.

(10) Deed restrictions and grant requirements applicable to each unit.

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

(12) The extent to which the closure of a park unit would disproportionately impact one community or region of the state over another, based on existing information readily available to the department. Nothing in this paragraph is intended to require the department to prepare, or contract for the preparation of, new studies or research to obtain information or analysis not already readily available to the department with existing resources.

(13) The extent to which the closure of a park unit would limit availability of facilities within state parks that are compliant with the Americans with Disabilities Act of 1990 and subsequent amendments to the act.

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

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

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

(d) Notwithstanding Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, a public entity or a public employee is not liable for injury or damage caused by a condition of public property located in, or injury or damage otherwise occurring in, or arising out of an activity in, a state park system unit that is designated as closed by the department pursuant to subdivision (a), except for conduct that constitutes gross negligence or is wanton or reckless. This immunity shall apply notwithstanding the fact that the public has access, whether invited or uninvited, to the state park system unit, and notwithstanding that the department may take actions such as patrols, inspections, maintenance, and repairs necessary to protect the state park system unit facilities and resources from deterioration, damage, or destruction. This immunity shall apply only to units of the state park system that are designated as closed pursuant to subdivision (a) and shall not apply to units that are partially closed or subject to service reductions but not closure. The closed units shall be maintained in a list by the department and the list shall be made publicly available and posted on the department's Internet Web site. The list shall include the date the unit is considered closed. The immunity provided by this subdivision does not limit any other immunity or immunities available to a public entity or a public employee. The governmental immunity provided in this section does not apply to a third party or entity that has reopened a park listed as closed pursuant to subdivision (a). The immunity shall continue to apply to the state.

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

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

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

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

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

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

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

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

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

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

SEC. 4. Section 5010.7 of the Public Resources Code is amended to read:

5010.7. (a) The department shall develop a revenue generation program as an essential component of a long-term sustainable park funding strategy. On or before October 1, 2012, the department shall assign a two-year revenue generation target to each district under the control of the department. The revenue target may be amended annually for subsequent years, beginning in the 2015–16 fiscal year. The department shall develop guidelines for districts to report the use of funds generated by the revenue generation program, and shall post information and copies of the reports on its Internet Web site.

(b) The California State Park Enterprise Fund is hereby created in the State Treasury as a working capital fund, and the revenue shall be available to the department upon appropriation by the Legislature, for the expenditures for the purposes specified in this section and shall be available for encumbrance and expenditure until June 30, 2014, and for liquidation until June 30, 2016.

(c) The incremental revenue generated by the revenue generation program developed pursuant to subdivision (a) shall be deposited into the State Parks and Recreation Fund. Revenue identified as being in excess of the revenue targets shall be transferred to the State Parks Revenue Incentive Subaccount, established pursuant to Section 5010.6, on or before June 1, annually.

(d) Moneys appropriated to the department pursuant to subdivision (b) and Section 5010.6 shall be expended as follows:

(1) (A) The department shall allocate 50 percent of the total amount of revenues deposited into the State Parks Revenue Incentive Subaccount pursuant to subdivision (c), generated by a park district to that district if the amount of revenues generated exceeds the targeted revenue amount prescribed in the revenue generation program. The revenues to be allocated to a park district that fails to achieve the revenue target shall remain in the fund.

(B) With the approval of the director, each district shall use the funds it receives from the department from the revenue generation program to improve the parks in that district through revenue generation programs and projects and other activities that will assist in the district's revenue generation activities, and the programs, projects, and other activities shall be consistent with the mission and purpose of each unit and with the plan developed for the unit pursuant to subdivision (a) of Section 5002.2.

(C) The department shall report to the Legislature, commencing on July 1, 2014, and annually on or before each July 1 thereafter, on the revenue distributed to each district pursuant to this section.

(2) The department shall use 50 percent of the funds deposited into the State Parks Revenue Incentive Subaccount pursuant to subdivision (c) for the following purposes:

(A) To fund the capital costs of construction and installation of new revenue and fee collection equipment and technologies and other physical upgrades to existing state park system lands and facilities.

(B) For costs of restoration, rehabilitation, and improvement of the state park system and its natural, historical, and visitor-serving resources that enhance visitation and are designed to create opportunities to increase revenues.

(C) For costs to the department to implement the action plan required to be developed by the department pursuant to Section 5019.92 of the Public Resources Code.

(D) To establish a revolving loan program pursuant to subdivision (e).

(e) (1) The department shall establish a revolving loan program and prepare guidelines establishing a process for those districts that receive moneys under paragraph (1) of subdivision (d) to apply for funds that exceed the amount of funds provided to the districts pursuant to paragraph (1) of subdivision (d). It is the intent of the Legislature that the revolving loan program fund only those projects that will contribute to the success of the department's revenue generation program and the continual growth of the fund over time. Districts may apply for funds for capital projects, personnel, and operations that are consistent with this subdivision, including the costs of preparing an application. The department shall provide an annual accounting to the Department of Finance and the relevant legislative committees of the use of those funds in accordance with the purposes outlined in Proposition 40 (the California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Bond Act of 2002 (Chapter 1.696 (commencing with Section 5096.600) of Division 5) and Proposition 84 (the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 (Division 43 (commencing with Section 75001)), voter-approved bond acts.

(2) The guidelines prepared pursuant to paragraph (1) shall require that applications for funding include all of the following:

(A) A clear description of the proposed use of funds, including maps and other drawings, as applicable.

(B) A market analysis demonstrating demand for the project or service.

(C) The projected lifespan of the project, which must be at least 20 years for a proposed capital project.

(D) A projection of revenues, including the specific assumptions for annual income, fees, occupancy rates, pricing, and other relevant criteria upon which the projection is based.

(E) A projection of costs, including, but not limited to, design, planning, construction, operation, staff, maintenance, marketing, and information technology.

(F) The timeframe for implementation, including all necessary reviews and permitting.

(G) The projected net return on investment of the life of the project.

(H) Provisions providing for mandatory reporting on the project by districts to the department.

(f) The department shall rank all of the proposals and award loans for projects or other activities to districts based on the following criteria, as well as other considerations that the department considers relevant:

(1) Return on investment.

(2) Length of time for implementation.

(3) Length of time for the project debt to be retired.

(4) Percentage of total project costs paid by the district or by a source of matching funds.

(5) Annual operating costs.

(6) Capacity of project to improve services or park experiences, or both, for park visitors.

(g) The funds generated by the revenue generation program shall not be used by the department to expand the park system, unless there is significant revenue generation potential from such an expansion.

(h) Notwithstanding Section 5009, moneys received by the department from private contributions and other public funding sources may also be deposited into the California State Park Enterprise Fund for use for the purposes of subdivision (c) and subdivision (d).

(i) The department shall provide all relevant information on its Internet Web site concerning how the working capital funds are spent, including the guidelines and the department's ranking criteria for each funded loan agreement.

(j) A project agreement shall be negotiated between the department and a park unit and the total amount of requested project costs shall be allocated to the district as soon as is feasible when the agreement is finalized.

(k) The department may recoup its costs for implementing and administering the working capital from the fund.

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. If the department

enters into an operating agreement that involves the operation of the entirety of a park unit, that agreement may be entered into pursuant to this section only to the extent that the 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. 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.

(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 only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to enable the state to as soon as possible enter into partnerships and generate the revenues necessary to keep state parks open to the public, and to preserve the parks' vital role in ensuring healthy communities, it is necessary that this bill take effect immediately.