An act to amend Sections 13988.2, 13988.3, and 14615.1 of the Government Code, and to amend Section 10335 of the Public Contract Code, relating to state intellectual property.

LEGISLATIVE COUNSEL’S DIGEST

AB 2880, as amended, Committee on Judiciary. State intellectual property.

Existing law authorizes the Department of General Services to carry out various powers and duties relating to assisting a state agency in the management and development of intellectual property developed by state employees or with state funding, including, among other duties, developing a database of state-owned intellectual property using specified data and factors that state agencies should consider when deciding whether to sell their intellectual property or license it to others.

This bill would authorize a public entity to own, license, and, if it deems it appropriate, formally register intellectual property it creates or otherwise acquires. The bill would provide that a public entity’s intellectual property rights would not preclude the public entity from disclosing any information otherwise accessible under the California Public Records Act and that those disclosures would not be construed as waiving any rights afforded under the federal Copyright Act of 1976.
Under existing law, contracts by state agencies for services rendered to the state are, with certain exceptions, of no effect unless and until approved by the Department of General Services. Existing law imposes various requirements with respect to contracts for services rendered to the state.

This bill would require state agencies to consider the processes, procedures, or policies developed by the department regarding the management and development of state intellectual property. For contracts entered into on or after January 1, 2017, the bill would prohibit a state agency from entering into a contract that waives the state’s intellectual property rights unless the agency, prior to execution of the contract, obtains the consent of the department to the waiver and would provide that a waiver of the state’s intellectual property rights by a state agency that violates this requirement would be deemed void as against public policy. The bill would also require the department to develop sample language for an advisory provision to that effect.

Existing law exempts from the Administrative Procedure Act certain actions to maintain, develop, or prescribe processes, procedures, or policies by the Department of General Services that are required or authorized by the Legislature with respect to the general operations of the department or the awarding of state contracts.

This bill would additionally exempt those actions taken with respect to the department’s above-described duties relating to the management and development of state intellectual property, as provided.

Existing law requires the Department of General Services to, among other duties, track intellectual property generated by state employees or with state funding.

This bill would declare the intent of the Legislature to enact legislation related to the rights to state-owned intellectual property.


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

1  SECTION 1. Section 13988.2 of the Government Code is amended to read:
2  13988.2. (a) The department shall perform all of the following functions:
(1) Commencing January 1, 2015, and every three years thereafter, track intellectual property generated by state employees or with state funding.

(2) Develop a database that includes, but is not limited to, tracking intellectual property by category of protection, date of creation, owner of intellectual property, grantee, state agency or granting entity, sources of funding, and status of licensing, including invention utilization updates. Failure to include an item in the database does not create any presumption regarding ownership. Prior to January 1, 2018, the database shall include the summary of state-owned intellectual property found in the California State Auditor’s Report 2011-106 on intellectual property. After January 1, 2018, and every three years thereafter, the database shall be updated using information collected by the department pursuant to this section.

(3) Develop a sample maintenance plan of an inventory of intellectual property.

(4) Develop factors that state agencies should consider when deciding whether to sell their intellectual property or license it to others, including, but not limited to, the state’s best interest, maintaining public access, and the discouragement of unauthorized economic gain.

(5) Develop an outreach campaign informing state agencies of their rights and abilities concerning intellectual property created by their employees.

(6) Develop sample invention assignment agreements that state agencies can consider if they believe it is necessary to secure the rights to potentially patentable items created by their employees on worktime using state resources.

(7) Develop sample language for licenses or terms-of-use agreements that state agencies can use to limit the use of their intellectual property by others to only appropriate purposes.

(8) Develop sample language for an advisory provision stating that a waiver of the state’s intellectual property rights is subject to the approval of the department and that the lack of that approval renders an attempted waiver void as against public policy.

(b) This section shall not apply to the use of expressive works created by nonstate employees or without state funding.
SEC. 2. Section 13988.3 of the Government Code is amended to read:

13988.3. (a) Notwithstanding a public entity may own, license, and, if it deems it appropriate, formally register intellectual property it creates or otherwise acquires. A public entity’s intellectual property right shall not preclude the public entity from disclosing any information otherwise accessible under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1). A disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) shall not be construed as waiving any rights afforded under the federal Copyright Act of 1976 (17 U.S.C. Sec. 101 et seq.).

(b) Notwithstanding any other law, state agencies and departments may, upon request, share records and information related to intellectual property generated by state employees or with state funding with the department.

(c) Any employee or former employee of the department who has access to or knowledge of the records and information described in subdivision (a), (b), shall not divulge or make known to any person not employed by the department in any manner not expressly permitted by law any particulars of these records or information that is restricted by law from public disclosure, or represents a first publication of research results, or information pertaining to patent rights that would not otherwise be publicly available.

SEC. 3. Section 14615.1 of the Government Code is amended to read:

14615.1. (a) Where the Legislature directs or authorizes the department to maintain, develop, or prescribe processes, procedures, or policies in connection with the administration of its duties under this chapter, chapter and Chapter 2 (commencing with Section 14650), chapter and Chapter 2 (commencing with Section 13988) of Part 4.5, or Section 6611 of the Public Contract Code; Code or Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code, the action by the department shall be exempt from the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), Chapter 4.5 (commencing with
Section 11400), and Chapter 5 (commencing with Section 11500)). This section shall apply to actions taken by the department with respect to the State Administrative Manual and the State Contracting Manual.

(b) To the extent permitted by the United States and California Constitutions, subdivision (a) also applies to actions taken by the department prior to January 1, 1999, with respect to competitive procurement in the State Administrative Manual and the State Contracting Manual.

SEC. 4. *Section 10335 of the Public Contract Code is amended to read:* 10335. (a) This article shall apply to all contracts, including amendments, entered into by any state agency for services to be rendered to the state, whether or not the services involve the furnishing or use of equipment, materials, or supplies or are performed by an independent contractor. Except as provided in Sections 10295.6 and 10351, and paragraphs (8) and (9) of subdivision (b) of Section 10340, all contracts subject to this article are of no effect unless and until approved by the department. Each contract shall be transmitted with all papers, estimates, and recommendations concerning it to the department and, if approved by the department, shall be effective from the date of approval.

This article shall apply to any state agency that by general or specific statute is expressly or impliedly authorized to enter into the transactions referred to in this section. This article shall not apply to contracts for the construction, alteration, improvement, repair, or maintenance of real or personal property, contracts for services subject to Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code, to contracts that are listed as exceptions in Section 10295, contracts of less than five thousand dollars ($5,000) in amount, contracts of less than five thousand dollars ($5,000) where only per diem or travel expenses, or a combination thereof, are to be paid, contracts between state agencies, or contracts between a state agency and local agency or federal agency.

(b) In exercising its authority under this article with respect to contracts for the services of legal counsel, other than the Attorney General, entered into by any state agency that is subject to Section 11042 or Section 11043 of the Government Code, the department, as a condition of approval of the contract, shall require the state
agency to demonstrate that the consent of the Attorney General to
the employment of the other counsel has been granted pursuant to
Section 11040 of the Government Code. This consent shall not be
construed in a manner that would authorize the Attorney General
to establish a separate program for reviewing and approving
contracts in the place of, or in addition to, the program administered
by the department pursuant to this article.

(c) Until January 1, 2001, the department shall maintain a list
of contracts approved pursuant to subdivision (b). This list shall
be filed quarterly with the Senate Committee on Budget and Fiscal
Review and the Assembly Committee on Budget. The list shall be
limited to contracts with a consideration in excess of twenty
thousand dollars ($20,000) during the life of the contract and shall
include sufficient information to identify the provider of legal
services, the length of each contract, applicable hourly rates, and
the need for the services. The department shall add a contract that
meets these conditions to the list within 10 days after approval. A
copy of the list shall be made available to any requester. The
department may charge a fee to cover the cost of supplying the list
as provided in Section 6253 of the Government Code.

(d) (1) In exercising its authority under this article, a state
agency shall consider the processes, procedures, or policies
developed by the department pursuant to Chapter 2 (commencing
with Section 13988) of Part 4.5 of Division 3 of Title 2 of the
Government Code.

(2) For contracts entered into on or after January 1, 2017, both
of the following shall apply:

(A) A state agency shall not enter into a contract under this
article that waives the state’s intellectual property rights unless
the state agency, prior to execution of the contract, obtains the
consent of the department to the waiver.

(B) An attempted waiver of the state’s intellectual property
rights by a state agency that violates subparagraph (A) shall be
deemed void as against public policy.

(e) Contracts subject to the approval of the department shall
also have the department’s approval for a modification or
amendment thereto, with the following exceptions:

(1) An amendment to a contract that only extends the original
time for completion of performance for a period of one year or
less is exempt. If the original contract was subject to approval by
the department, one fully executed copy including transmittal
document, explaining the reason for the extension, shall be sent
to the legal office of the department. A contract may only be
amended once under this exemption.

(2) Contracts let or awarded on the basis of a law requiring
competitive bidding may be modified or amended only if the
contract so provides or if authorized by the law requiring
competitive bidding.

(3) If an amendment to a contract has the effect of giving the
contract as amended an increase in monetary amount, or an
agreement by the state to indemnify or save harmless any person,
the amendment shall be approved by the department.

SECTION 1. It is the intent of the Legislature to enact
legislation related to the rights to state-owned intellectual property.