

Assembly Bill No. 2394

CHAPTER 344

An act to amend Sections 15853, 15860, 15862.5, and 15864 of the Government Code, and to amend Sections 5003.17, 5006, and 5080.16 of the Public Resources Code, relating to parks and recreation.

[Approved by Governor August 21, 1998. Filed with Secretary of State August 24, 1998.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2394, Margett. Parks and recreation: property acquisitions contracts.

Under existing law, all land and other real property to be acquired by any state agency, including the Department of Parks and Recreation, is required to be acquired by the State Public Works Board in accordance with the Property Acquisition Law. Existing law requires the board to acquire on behalf of, and for the department, in accordance with the Property Acquisition Law, land or other real property or interests in real property, including options to purchase, which have been appraised and selected by the department.

This bill would require the board to acquire any interests in real property, including options to purchase, which have been appraised, selected, and settled through purchase negotiations by the department, and would revise various requirements for the transfer of title of property to the department, as specified.

Existing law authorizes the expenditure of any appropriation for the acquisition of real property pursuant to the Property Acquisition Law, to be expended for the payment of all costs and expenses incurred in the examination, and the determination of the suitability of any real property to be acquired or under consideration for acquisition or, necessarily incurred in the course of acquisition of any such real property and requires that claims for those costs and expenses be presented by the Director of General Services and paid by the Controller.

This bill would require that any claims for those costs and expenses related to real property acquisitions by the department be presented by the Director of Parks and Recreation, and paid by the Controller.

Existing law requires the department to obtain jurisdiction subject to any existing lease or rental agreement concerning any real property transferred, as specified, and to make the real property accessible and usable by the general public at the earliest opportunity. Existing law requires the deposit of all rents and other returns received by the department from real property, in accordance with specified requirements, and requires the

department to request from the Legislature in its annual budget funds sufficient to meet its costs of property management and its costs of operation and maintenance of specified real property.

This bill would delete those requirements and would, instead, require that specified real property or interest in real property acquired by the department be under the jurisdiction of the department, immediately upon transfer of title to the state. The bill would require the director, on behalf of the board, to file against any appropriation for specified expenditures relating to real property acquisitions, all claims covering expenditures incurred by the department in the acquisition of real property for the state park system pursuant to the act by which the appropriation is made, and would require the Controller to draw a warrant therefor.

Existing law authorizes the department to lease, for use, all or any portion of any parcel of real property acquired for the state park system, if the director makes specified findings, but prohibits the term of a lease from exceeding a period of 5 years.

This bill would increase to 10 years the maximum term for any such lease.

Existing law authorizes the department, with the consent of the Department of Finance, and subject to specified requirements, to acquire title to, or any interest in, real or personal property, which the department deems necessary or proper for the extension, improvement, or development of the state park system.

This bill would revise various requirements relating to the department's acquisition of title to, or any interest in, real property, including personal property incidental to the purchase of real property and options to purchase property, as prescribed.

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

SECTION 1. Section 15853 of the Government Code is amended to read:

15853. (a) The board may select and acquire, in the name of and on behalf of the state, with the consent of the state agency concerned, the fee or any lesser right or interest in any real property necessary for any state purpose or function.

(b) If moneys are appropriated by the Budget Act for any fiscal year or by any other act for the acquisition of land or other real property, either (1) subject to this part or (2) for any state agency for whom property is acquired by the board, the moneys and acquisitions are subject to this part and the moneys shall be expended in accordance with this part, notwithstanding any other provisions of law.

(c) Notwithstanding any other provisions of law, all land and other real property to be acquired by or for any state agency, other than the Department of Transportation, the Department of Water



Resources, the State Reclamation Board, the Department of Fish and Game, the Wildlife Conservation Board, the Public Employees' Retirement System, the State Teachers' Retirement System, the Department of Housing and Community Development, and the State Lands Commission, except for property to be acquired for the State Lands Commission pursuant to an appropriation from the General Fund, shall be acquired by the State Public Works Board in accordance with this part.

(d) (1) Notwithstanding subdivision (a), the board shall acquire, on behalf of and for the Department of Parks and Recreation, in accordance with this part, any interests in real property, including options to purchase, which have been appraised, selected, and settled through purchase negotiations by the Department of Parks and Recreation pursuant to subdivision (b) of Section 5006 of the Public Resources Code. Out of moneys appropriated for the acquisition of options to purchase, no more than ten thousand dollars (\$10,000) may be expended for the acquisition of any single option unless otherwise provided by the Legislature.

(2) Notwithstanding Section 15854, purchase negotiations for interests in real property for the state park system pursuant to subdivision (d) of Section 5006 of the Public Resources Code shall be initiated within six months of the effective date of the act that appropriates funds for the acquisition. Purchase negotiations on all projects not proposed pursuant to subdivision (d) of Section 5006 of the Public Resources Code shall be initiated within 12 months of the effective date of the act appropriating funds for the acquisition. Either title shall be conveyed or a written agreement to transfer title shall be executed within the appropriate authorization period unless the Department of Parks and Recreation formally abandons the acquisition prior to the conclusion of the appropriate authorization period. For the purposes of this section, in order for the Department of Parks and Recreation to "formally abandon" an acquisition, it shall transmit written notification to the board of its intent not to proceed with the acquisition.

(3) The board, at any time during the periods specified in paragraph (2), may commence condemnation proceedings if it finds it to be appropriate. However, if, during the appropriate authorization period, title is not conveyed or a written agreement to transfer title is not signed, the acquisition has not been formally abandoned, or condemnation proceedings have not been commenced, the Department of Parks and Recreation shall notify, by letter, the chair of the committee in each house of the Legislature that considers appropriations, the Chair of the Joint Legislative Budget Committee, and the Members of the Legislature within whose district any part of the land or other real property is located of the status of the acquisition. For the purpose of this paragraph,



condemnation proceedings shall be deemed to be commenced as of the date the board authorizes acquisition by condemnation.

(4) The board may schedule special meetings as are necessary to expedite the acquisition of options to purchase real property for the state park system.

(e) The board may acquire furnishings that the owner thereof agrees to sell and that are contained within improvements acquired by the board. Cost of acquisition of furnishings shall be charged to the appropriation available for acquisition of the real property.

SEC. 2. Section 15860 of the Government Code is amended to read:

15860. (a) Any appropriation for the acquisition of real property pursuant to this part may be expended for the payment of all costs and expenses, including the cost of investigation and surveys, the fees and expenses of appraisers and expert witnesses, and the cost of title searches necessarily incurred in the examination, and the determination of the suitability of any real property to be acquired or under consideration for acquisition, or necessarily incurred in the course of acquisition of any such real property. Claims for costs and expenses shall be presented by the Director of General Services and shall be paid by the Controller.

(b) Notwithstanding subdivision (a), claims for those costs and expenses related to real property acquisitions by the Department of Parks and Recreation, shall be presented by the Director of Parks and Recreation, and shall be paid by the Controller.

SEC. 3. Section 15862.5 of the Government Code is amended to read:

15862.5. Notwithstanding Section 15862, all real property or interest in real property acquired by the Department of Parks and Recreation pursuant to subdivision (d) of Section 15853 of the Government Code and Section 5006 of the Public Resources Code shall be under the jurisdiction of the Department of Parks and Recreation, immediately upon transfer of the title to the state. The Department of Parks and Recreation shall attempt to make the real property accessible and usable by the general public at the earliest possible time.

SEC. 4. Section 15864 of the Government Code is amended to read:

15864. (a) On behalf of the board, the Director of General Services shall file against any appropriation made for expenditure under this part all claims covering expenditures incurred in acquiring real property pursuant to the act by which the appropriation is made, and the Controller shall draw a warrant therefor.

(b) Notwithstanding subdivision (a), the Director of Parks and Recreation, on behalf of the board, shall file against any appropriation for expenditure under this part all claims covering expenditures



incurred by the Department of Parks and Recreation in the acquisition of real property for the state park system pursuant to the act by which the appropriation is made, and the Controller shall draw a warrant therefor.

SEC. 5. 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 the Legislature has reviewed and approved the proposed lease as part of the annual budget process, or the Public Works Board has determined that the proposed lease could not have been presented to the Legislature for review and approval in the course of its consideration of the Budget Bill and that it would be adverse to the interests of the public to defer that review and approval to a time when the Legislature next considers a Budget Bill. Upon making that determination, the board may review and approve the proposed lease after giving at least 20 days' written notice to the Chairperson of the Joint Legislative Budget Committee and to the chairperson of the fiscal and appropriate policy committees of its intended action. All actions taken by the board pursuant to this subdivision shall be reported to the Legislature in the next Governor's Budget.

SEC. 6. Section 5006 of the Public Resources Code is amended to read:

5006. (a) The department, with the consent of the Department of Finance, and subject to Section 15853 of the Government Code, may acquire title to or any interest in real property, including personal property incidental to the purchase of real property and options to purchase property, which the department deems necessary or proper for the extension, improvement, or development of the state park system. All real and personal property acquired by the department for the state park system shall be under the jurisdiction of the department immediately upon transfer of title to the state.

(b) (1) The department, pursuant to paragraph (1) of subdivision (d) of Section 15853 of the Government Code, may appraise and select real property for the purpose of acquiring an option to purchase the real property for the state park system. The



department may utilize the services of the Real Estate Services Division of the Department of General Services or may contract with independent appraisers appropriately certified by the Office of Real Estate Appraisers, to assist in appraising property.

(2) The department, pursuant to paragraph (1) of subdivision (d) of Section 15853 of the Government Code, may appraise and select real property for potential acquisition of, and addition to, the state park system. The department may utilize the services of the Real Estate Services Division of the Department of General Services or may contract with independent appraisers appropriately certified by the Office of Real Estate Appraisers, to assist in appraising the property. Prior to appraising the property, the Department of Parks and Recreation shall notify the owners of the real property that the department is considering the real property for acquisition, and may have it appraised. The department shall determine the form and manner of giving the notice.

(3) The department, pursuant to paragraph (1) of subdivision (d) of Section 15853 of the Government Code, may select real property it has appraised and submit purchase offers and negotiate a purchase agreement with the owner or owners of the property. The department shall be responsible for implementing and processing the purchase agreement and conveyance of title to the state. The department may utilize the services of the Real Estate Services Division of the Department of General Services, or may contract with other state agencies with real estate and right-of-way acquisition programs, to assist in negotiating purchase agreements and conveyance of title.

(c) Upon acquisition of real property for the state park system, the department shall be responsible for providing relocation assistance to displaced persons as provided under Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 of the Government Code. The department may utilize the services of the Real Estate Services Division of the Department of General Services, or may contract with other state agencies or private consultants with real estate and right-of-way acquisition programs, to assist in relocation planning and implementation.

(d) (1) Requests for funding to administer the department's acquisition program shall be submitted by the department for inclusion in the Governor's Budget for each fiscal year.

(2) Requests for funding to acquire options to purchase real and personal property for the state park system shall be submitted by the department for inclusion in the Governor's Budget for each fiscal year based upon its estimate of the amount needed for that purpose. If an option to purchase real property for the state park system has been acquired, the funding proposed by the department shall be the appraised value of the property less the sum expended for the purchase of the option. The expenditure of the moneys shall be



subject to the limitation specified in paragraph (1) of subdivision (d) of Section 15853 of the Government Code unless otherwise provided by the Legislature.

(3) Requests for funding to acquire real property or any interest in real property shall be submitted by the department for inclusion in the Governor's Budget for each fiscal year. The projects shall have been selected and appraised by the department pursuant to subdivision (b) prior to inclusion. The Governor's Budget shall contain a separate description of each project, or acquisition program and its appraised value, or funding allocation.

(e) The requirements imposed by subdivision (d) are in addition to any other provisions of law requiring the inclusion of state park system acquisition projects in the Governor's Budget.

(f) The department shall not enter into any purchase agreements for the acquisition of real property if the consideration to be paid by the department is in excess of five hundred thousand dollars (\$500,000), unless Section 5006.1 has been complied with.

(g) Notwithstanding any other provision of law, all appraisals conducted by the department pursuant to this section shall be reviewed and approved by the Department of General Services or, at the discretion of the Department of General Services, a competent professional appraiser approved by the Department of General Services. Real property shall be appraised and appraisal review completed before commencement of purchasing negotiations. All contracts related to the acquisition of real property shall be reviewed and approved by the Department of General Services pursuant to Section 11005 of the Government Code.

SEC. 7. Section 5080.16 of the Public Resources Code is amended to read:

5080.16. If the director determines that it is for the best interests of the state, the director, upon giving notice to the State Park and Recreation Commission, may negotiate or renegotiate a contract, including terms and conditions, when one or more of the following conditions exist:

(a) The bid process as prescribed in this article has failed to produce a best responsible bidder.

(b) The negotiation or renegotiation would constitute an extension of an existing contract obtained through the process required by this article and the extended contract would provide for substantial and additional concession facilities, which would be constructed at the sole expense of the concessionaire and which are set forth in the general plan for the unit and are needed to accommodate existing or projected increased public usage.

(c) Lands in the state park system administered by the department and lands under the legal control of the prospective concessionaire are so situated that the concession is dependent upon



the use of those public and private lands for the physical or economic success, or both, of the concession.

(d) Whenever a concession is desired for particular interpretive purposes in a unit of the state park system and the prospective concessionaire possesses special knowledge, experience, skills, or ability appropriate to the particular interpretive purposes.

(e) Whenever the concession has been severely and adversely impacted through no fault of the concessionaire by an unanticipated calamity, park closure, major construction, or other harmful event or action.

(f) Whenever the estimated administrative costs for the bid process exceed the projected annual net rental revenue to the state.

