

Date of Hearing: May 4, 2016

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Lorena Gonzalez, Chair
AB 2880 (Committee on Judiciary) – As Amended March 15, 2016

Policy Committee: Judiciary

Vote: 9 - 0

Urgency: No

State Mandated Local Program: No

Reimbursable: No

SUMMARY:

This bill enhances the state's existing rules, processes, and procedures related to state-funded intellectual property and provides additional guidance to state agencies to manage and protect the state's intellectual property. Specifically, this bill:

- 1) Requires the Department of General Services (DGS), when developing factors for state agencies that decide to sell or license intellectual property, to include considerations of the state's best interest, maintaining public access, and the discouragement of unauthorized economic gain.
- 2) Provides that state contracts entered into after January 1, 2017:
 - a) Shall not waive the state's intellectual property rights unless the state agency, prior to execution of the contract, obtains the consent of DGS to the waiver, and
 - b) An attempted waiver of the state's intellectual property rights by a state agency that violates (2)(a) shall be deemed void as against public policy.
- 3) Provides that a public entity may own, license, and if it deems it appropriate, formally register intellectual property it creates or otherwise requires, and provides that 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 (CPRA).

FISCAL EFFECT:

- 1) DGS leads the state's Intellectual Property Work Group, which is developing policies, procedures, and processes to implement existing law regarding intellectual property. The incremental workload associated with implementing this bill will therefore be minor and absorbable.
- 2) DGS's costs to review proposed agency contract provisions waiving intellectual property rights would be reimbursed by the contracting agency. These costs should not be significant for any single agency.

COMMENTS:

Background and Purpose. The recent, well-publicized Yosemite National Park trademark dispute not only put a spotlight on the federal government's intellectual property rights, but also

raised questions about the State of California's intellectual property rights, as well; specifically as to whether a third-party contractor who enters into a contract with the state acquires any intellectual property rights over products and services a contractor creates and provides to the public that is funded with public dollars, even after the contract expires.

This bill is the result of the Assembly Committee on Judiciary's review of the state's existing statutory framework regarding management of intellectual property, and the committee's conclusion that improvements were warranted.

This bill does the following: (1) clarifies existing law that public agencies may own, license, and register intellectual property, and provides that such intellectual property is still accessible under the California Public Records Act; (2) provides policy guidance to DGS on factors state agencies should consider when deciding whether to sell or license state-owned intellectual property; (3) enables DGS to include guidelines in its State Contracting Manual on how state agencies should manage its intellectual property; (4) requires state agencies, when entering into a contract, to consider the guidance, policies, and procedures developed by DGS on intellectual property; and (5) prohibits a state contract that waives the state's intellectual property unless DGS has consented to the waiver.

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