



The service concession agenda in protected areas in the state of São Paulo

A agenda de concessão de serviços em áreas protegidas no estado de São Paulo

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ABSTRACT: In the last decade, the importance of the debate on the implantation of public-private partnership for the management of protected areas has been rising in Brazil. In this context, the Pub. L. 16.260/16 was published in state of São Paulo, entitling the State Treasury to grant the exploration of services and the use of areas in 25 state protected areas, which house important forest remnants and numerous traditional communities. Its approval process has been troubled since its first drafting as Bill 249/13, with numerous questions raised by various sectors of society. This study analyzed the formulative process of the agenda of service concession in protected areas in the state of São Paulo, which culminated in the publication of Pub. L.16.260/16. The theoretical framework used was Kingdon's Multiple Streams Framework (2003) and the data were obtained through documentary research, bibliographic research and semi-structured interviews with the main actors involved in the process. The results show that the agenda-setting process was motivated by a crisis in the management of protected areas, but the choice of service concessions as a solution to this problem was influenced by actors and the favorable political environment.

Keywords: agenda; protected areas; concession; public policies.

RESUMO: Na última década, a discussão sobre o uso das parcerias público privadas no âmbito da gestão das áreas protegidas tem ganhado força no Brasil. Neste contexto, foi publicada no estado de São Paulo a Lei nº 16.260/16, autorizando a Fazenda do Estado a conceder a exploração de serviços e o uso de áreas em 25 unidades de conservação estaduais, que abrigam importantes remanescentes florestais e inúmeras comunidades tradicionais. Seu processo de aprovação foi conturbado desde sua primeira redação como o Projeto de Lei nº 249/13, tendo sido levantados inúmeros questionamentos por parte de vários setores da sociedade. Este estudo

analisou o processo de formação da agenda de concessão de serviços em unidades de conservação no estado de São Paulo que culminou na publicação da Lei nº 16.260/16. O referencial teórico utilizado foi o Modelo de Fluxos Múltiplos de Kingdon (2003) e os dados foram obtidos através de pesquisa documental, levantamento bibliográfico e entrevistas semiestruturadas com os principais atores envolvidos no processo. Os resultados mostram que o processo de formação da agenda foi motivado por uma crise na gestão das áreas protegidas, mas a escolha da concessão de serviços como solução para esse problema teve influência dos atores e do ambiente político favorável.

Palavras-chave: agenda; áreas protegidas; concessão; políticas públicas.

1. Introduction

The publication of Pub. L. 16.260/16 by the state of São Paulo, which authorizes the State Treasury to grant the exploration of services or the use, in whole or in part, of areas in state properties, as protected areas, brought insecurity to several sectors of society concerned with socio-environmental conservation, due to the undemocratic process of elaboration and approval of Bill 249/13, which gave rise to it. Doubts about the conditions under which service concessions will be granted in conservation units and the lack of openness to debate with local communities and socio-environmental organizations throughout its elaboration process point to the need for a reflection on the process of building this policy.

Given the above, this study seeks to analyze the policy of service concession in protected areas proposed in Pub. L. 16.260/16, through the understanding of the reasons that allowed the rise of the topic for government deliberation. Therefore, this work focuses its analysis on the approval process of the Bill 249/13, seeking to understand the formulation of policy guidelines for service concession in protected areas in the state of São Paulo and the political and institutional context in which its referral took place. Therefore, the objective of this

study is to understand the formulative process of the agenda of service concession in protected areas in the state of São Paulo, which culminated in the publication of Pub. L. 16.260/16.

Viewing the proposed service concession in protected areas as a public policy, subject to approval within a political environment, the focus of this study is on the political process of formulating and discussing the bill, and not on the results of the policy itself. According to Kingdon (2006a), public policies are determined not only by final decisions such as votes in the legislature, or initiatives and vetoes by the executive branch, but also by the fact that some issues and proposals are launched, while others are never considered.

In our analysis, we deal specifically with the *formulation* of public policy, a moment of the political process in which most of the questions were raised by several non-governmental organizations and members of local communities in relation to the service concession policy of Pub. L. 16.160 /16, and where the motivations for the rise of the topic to the decision agenda of the State Government were concentrated.

Data collection was carried out in accordance with Creswell's (2007) recommendation regarding the use of triangulation of different sources of information to validate the research, having been

carried out through documentary research of legal documents (legislation and government reports), bibliographic survey (academic and grey literature), and semi-structured interviews with the main actors involved in the formulative process of the agenda of service concession in protected areas. The selection of interviewees was made using the “snowball” sampling (Vinuto, 2014). The initial group of interviewees was defined based on documental research and a bibliographic survey, and the other participants were included according to the indications of the initial group. In all, 42 people were contacted during the second half of 2020, of which 15 agreed to participate in the study. The group of interviewees included actors who work or were working at the time of the passage of Bill 249/13 in the Legislative Assembly of the State of São Paulo (2), in the São Paulo Environmental System (Fundação Florestal and Instituto Florestal) (5), in non-profit organizations (2), in traditional communities (2), in the Judiciary (1), in academia (1) and in the private sector (2), with the anonymity of participants being maintained. The set of information obtained was interpreted through qualitative methods and analyzed through the perspective proposed by Kingdon (2003) in the Multiple Streams Framework (MSF), developed as a proposal to explain the functioning of the definition of the public policy agenda.

1.1. The formulation of public policies and the agenda concept

In a simplified way, the political scientist John W. Kingdon considers that the formulation of public policies is a set of processes that include at least: the establishment of an agenda; specifying

the alternatives from which choices are made; a final choice between these alternatives and the implementation of that decision (Kingdon, 2006a). The word agenda has several uses, even within the context of public policies. In this study we use the following definition:

(...) the list of issues or problems that are the subject of serious attention at any given time, both from government authorities and from people outside the government, but closely associated with the authorities (Kingdon, 2006a, p. 222).

Among the possible themes or problems that may draw the attention of government officials, some are more prominent than others. The agenda-setting process reduces the body of possible themes or problems to a smaller set that, in fact, becomes the focus of attention. This set of themes or problems, which are the object of attention by government authorities and their advisors, form the *government agenda* (Kingdon, 2006a). The issues within the government agenda that are selected and forwarded for deliberation form the *decision agenda* (Kingdon, 2006a), a subset of issues that are about to become public policy (Cunha, 2013). In addition to the set of issues or problems that are on the agenda, a set of alternatives for action are considered by government authorities and people closely associated with them, some of which may be considered more seriously than others. The specification process reduces the number of conceivable alternatives to the set of those that are actually considered, from which the choice will be made (Kingdon, 2006a; 2006b).

In Kingdon's (2006b) view, the reasons for some issues to be prioritized, while others are neglected, are related to the participants or the pro-

cesses by which they influence the establishment of agendas and alternatives. The author considers that there are basically three dynamics in processes of this type: *problems*, *policies* and *politics* (Kingdon 2006b; Gomide, 2008; Cunha, 2013). These three dynamics form the basis of the *Multiple Streams Framework* (Figure 1) developed by the author who, focusing his analysis on establishment processes of the agenda (*agenda-setting*) and alternatives from which choices will come to formulate the public policy, proposes to explain why some themes form the public policy agenda, becoming important for a government, while others do not (Kingdon 2003; Franco & Pelaez, 2016). For an item to become a priority on a government or decision agenda, it is

important that all three streams are linked (Kingdon, 2006b).

The *stream of problems* addresses the way in which some situations hold the attention of decision makers and are defined as problems (Cunha, 2013). For Kingdon (2006b), situations are defined as problems, and they increase their chances of becoming a priority on the agenda, only when it is believed that something should be done to change them (Kingdon, 2006b), which depends on how they are defined and interpreted (Back, 2012). From this perspective, the process of defining the issues to be forwarded to the decision agenda occurs through three elements: *indicators*, *focusing events*, and *feedback* (Kingdon, 2006b).

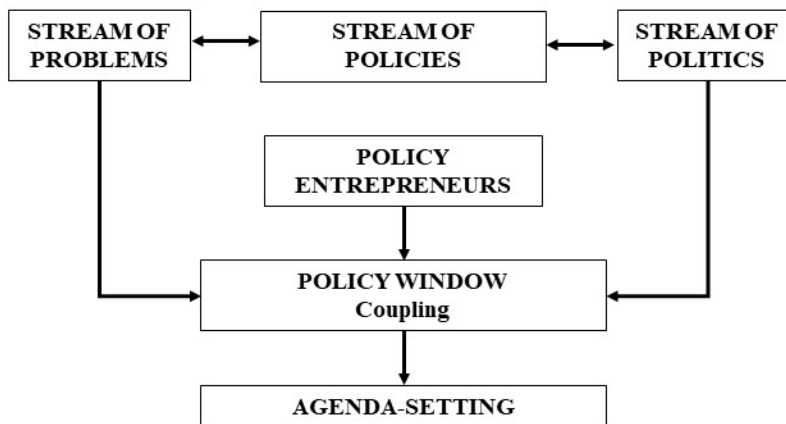


FIGURE 1 – Schematic of the Multiple Streams Framework.
SOURCE: Adapted from Capella (2005) and Kingdon (2006b).

Indicators, whether qualitative or quantitative, are used to assess the magnitude of a situation and monitor its changes, such as, for example, the number of wildfires in the Amazon. Both a high magnitude and a big change will catch the attention of the authorities. A *focusing event*, such as a disaster, a crisis or a powerful symbol, draws attention to certain situations, such as the Samarco disaster in Mariana (MG). *Feedback* is the way in which authorities can learn about information regarding the implementation of existing public programs, whether formal (routine monitoring cost or program evaluation studies) or informal (complaints that reach Congress) (Kingdon, 2006b).

The *stream of politics* addresses coalitions built from bargaining and political negotiation processes, with “powerful agenda-setting” unfolding. In this stream, where political events flow according to their own dynamics and rules, three elements influence the agenda-setting: the national mood (or climate), the organized political forces and the changes within the government (Kingdon, 2006b; Back, 2012; Cunha, 2013). Despite recognizing the influence of interest groups, Kingdon (2006b) states that the combination of the will of society with the holding of elections is a more powerful agenda-maker than that created by organized political groups. On the other hand, changes in government, or within the government itself, can occur through changes in management, people in strategic positions within the government structure (*turnover*), in the composition of Congress or in the leadership of public bodies and companies (Back, 2012).

In the *stream of policies*, solutions and alternatives to a problem or issue compete with each other for different interpretations that can be confronted or combined with new proposals, or even discarded (Back, 2012). In this selection process, the solutions and ideas most likely to be accepted by public policy makers are those that prove to be technically viable, have tolerable costs, and enjoy acceptance by the general public (Back, 2012).

This perspective places great emphasis on the influence of participants in the establishment of agendas, which Kingdon differentiates between “visible” and “invisible”. The group of visible participants is formed by those actors who receive considerable attention from the press and the public, including members of the Executive Branch, Congress, the media and actors related to the electoral process, such as political parties and campaign committees (Kingdon, 2006b). The group of invisible participants is the one responsible for generating alternatives, proposals and solutions, being formed by academics, researchers, consultants, career bureaucrats, congressional officials and analysts who work for interest groups (Kingdon, 2006b). The probability of a topic gaining greater visibility on the government agenda tends to increase if it is suggested by participants in the visible group (Kingdon, 2006b).

The *coupling* of the three streams presented in the Multiple Streams Framework occurs in specific situations, which end up generating opportunities for change in the agenda. This occurs when a problem is recognised, a solution is available, and political conditions make the moment ripe for

change, enabling the issue to rise to the agenda (Capella, 2005). This kind of situation is conceived by Kingdon (2006b) as *policy window*, which constitutes an opportunity for defenders of a particular idea to offer their solutions or for specific problems to be pointed out (Kingdon, 2006b). Windows are opened by events that occur both in the dynamics of *problems* and *politics* (Capella, 2005), such as, for example, the emergence of a problem that creates the opportunity to propose a solution, the election of new politicians that generate changes in the political climate or a powerful lobby that creates opportunities to surface some issues and proposals that reduce the chances of competitors (Kingdon, 2006b). On the other hand, although the flow of solutions does not directly influence the formation of the government agenda, it is crucial for an issue already present in this agenda to have access to the decision agenda (Capella, 2005).

The formation of policy windows can be predictable, as in times of renewal of legislatures, when opportunities arise to change, expand, or abolish certain programs, or it can be unpredictable, as in cases where an environmental accident or a tumultuous election produce an unexpected turnover of decision makers (Kingdon, 2006b). Regardless of the predictability of policy windows, they do not stay open for long and do not happen frequently (Kingdon, 2006b).

In the context of the junction of the three streams, *policy entrepreneurs* stand out, who are people willing to invest resources to promote policies that may favor them (Kingdon, 2006b). They consist of individual actors in the Executive (occupying

important positions) and the Legislative (as parliamentarians or advisors) or outside the Public Power (in interest groups, in the academic community, in the media). They usually represent other individuals and are willing to invest their resources (time, energy, reputation, and money) into an idea, in exchange for future earnings. These entrepreneurs are experts in a given subject, skillful negotiators, maintainers of political connections and play a fundamental role, joining solutions to problems (Cunha, 2013). Some of them enjoy a position of authority within the decision-making process, a characteristic that makes the policy-formulation process receptive to their ideas (Capella, 2005).

Policy entrepreneurs can act at different levels of the policy process (Kingdon, 2006b). In relation to proposals, they are important actors in the softening of decision-making process, by writing documents, making statements, promoting hearings, obtaining press coverage and holding meetings with important people (Kingdon, 2006b). Their objective is to convince the general public, specialized publics and the community of policy makers itself (Kingdon, 2006b). To achieve their goals, they play in the system the function of joining solutions to problems, problems to political forces, political forces to proposals, proposals to political moments and political events to problems (Capella, 2005; Kingdon, 2006b).

Based on the information gathered, the formulative process of the agenda of service concession in protected areas in the State of São Paulo, which gave rise to Bill 249/13 and, later, to Pub. L. 16.260/16, will be analyzed from the perspective of the Agen-

da established by Kingdon. The Multiple Streams Framework will be used to identify the processes that made the issue gain government attention at the time.

2. Concession in protected areas in the state of São Paulo – Pub. L. 16.260/16

Recently, the defense of a greater participation of the private sector in the management of protected areas, or even in some services associated with them, gained strength with the dissemination of the idea that in countries where resources destined to environmental conservation are scarcer, these areas are rarely associated with successful management. In addition to insufficient financial and human resources, government institutions do not have adequate management instruments to administrate activities that require agility and flexibility for these areas, unable to ensure their sustainable use (Rodrigues, 2009; Instituto Semeia, 2014). This argument guides the discussion on the proposal of public-private partnerships in the scope of the management of protected areas (Rodrigues, 2009; Instituto Semeia, 2014).

In this context, on June 30, 2016, the government of the state of São Paulo published Pub. L. 16.260, authorizing the State Treasury to grant the exploration of services or the use of areas, or part of areas, for ecotourism and commercial exploration of timber or forestry by-products, for a period of up to 30 years, in 25 protected areas (Table 1) (São Paulo, 2016). For the then Secretary of the Environment of the State of São Paulo, Patrícia Iglecias¹, the main objective of the concession of these areas was to improve the quality of the services provided to their users (Domingos, 2016).

The 25 areas offered for concession by the State of São Paulo can be distributed into three categories of protected areas according to their objective and permitted management within their limits (São Paulo, 2016). In total, there are 14 State Parks, areas classified by the Conservation Units National System (SNUC) as Integral Protection Units; six State Forests, which are Sustainable Use Conservation Units; and five Experimental Stations (Esex), areas not covered by the SNUC and managed by the Instituto Florestal (IF)², intended for carrying out scientific research programs and activities (Brasil, 2000; São Paulo, 2016; Instituto Florestal, 2018).

¹ Served as Secretary of the Environment of the State of São Paulo from 2015 to 2016 (Information provided by the Press Department of the Secretary of Infrastructure and Environment of the State of São Paulo via email on 12/3/2020).

² In the State of São Paulo, the management of protected areas was divided between Fundação Florestal (FF) and Instituto Florestal (IF), executing agencies of the São Paulo State Environment Secretariat (SMA) and, later, of the Secretariat of Infrastructure and Environment. With the publication of Pub. L. 17.293/20, the IF was extinguished and the management of protected areas was concentrated on the FF (São Paulo, 2020).

TABLE 1 – Protected areas contemplated in Pub. L. 16.260/16.

ORDER	STATE PROPERTY
1	SP Campos do Jordão
2	SP Cantareira
3	SP Intervales
4	SP Tourístico do Alto do Ribeira
5	SP Caverna do Diabo
6	SP Serra do Mar (Núcleo Santa Virgínia)
7	SP Serra do Mar (Núcleo São Paulo)
8	SP Jaraguá
9	SP Carlos Botelho
10	SP Morro do Diabo
11	SP Ilha do Cardoso
12	SP of Ilha Bela
13	SP Alberto Löfgren
14	Caminhos do Mar
15	Experimental Station of Araraquara
16	Experimental Station of Assis
17	Experimental Station of Itapeva
18	Experimental Station Mogi of Guaçu
19	Experimental Station of Itirapina
20	State Forest of Águas de Santa Bárbara
21	State Forest of Angatuba
22	State Forest of Batatais
23	State Forest of Cajuru
24	State Forest of Pederneiras
25	State Forest of Piraju State Forest

SOURCE: São Paulo, 2016.

The concession is considered as a legal act adopted by a public authority, which assigns to a person a right of use or a privilege (Drigo, 2010). Pursuant to Federal Pub. L. 8.987, of February 13, 1995, the public service concession consists of the delegation of its provision, made by the granting authority, in this case the State, through a bidding

process, in the form of competition, to the legal entity or consortium of companies that demonstrate capacity for their performance, at their own risk and for a determined period (Brasil, 1995).

According to Pub. L. 16.260, the exploration of wood resources and forest by-products will only be allowed in the areas provided for in the Conservation Unit (CU) Management Plan and intended for this purpose, and only after consulting the CU council, with the need for a favorable decision of the executing agency. The law also provides that this type of activity can only take place when the scientific projects planned for the areas have reached their objectives and if there is a guarantee of preservation of the gene bank. Still on the management of wood resources and forest by-products, the law determines that the concessionaire is obliged to carry out restoration projects or sustainable forestry production, in accordance with the regulations in force and approved by competent bodies and by the unit manager (São Paulo, 2016).

According to Patricia Iglecias, the service concession model proposed by Pub. L. 16.260 was already used in National Parks, such as the Iguaçu National Park (PR), the Tijuca National Park (RJ), the Serra dos Órgãos National Park (RJ), and the Fernando de Noronha National Marine Park (PE). In this model, companies earn the right to explore services related to visitation in national parks for a certain period and, in return, assume the commitment to make investments in the units, based on previous economic feasibility studies. In this management modality, the parks remain under the administrative and territorial control of the government, since it is not a matter of privatization (SISNAMA, 2016; ICMBIO, 2017).

Since its first publication, Bill 249/13 has raised several questions from non-governmental organizations, members of local communities and other actors linked to protected areas, who did not see their notes included in the writing of the text and, as a result, feared the possible consequences of its implementation in the form of law. The Fundação Florestal (FF) technical team itself claimed not to have had the proper involvement in the process of building this bill, as described in the “Blog of the CRF of the Fundação Florestal”³ (Blog of the CRF of the Fundação Florestal, 2015).

Among the questions raised in relation to the law, it stands out the fact that it contemplates CUs of different categories and does not present guidelines for the elaboration of the concession agreement for each of them (Girardi & Leite, 2016). Another point raised about the law was that the lack of clarity for the structuring of contracts can give rise to concession contracts drawn up according to momentary understandings or interests, and distortions or political pressures may occur to soften its requirements (Girardi & Leite, 2016; Sampaio, 2016).

Concerns were also raised regarding the possible consequences for traditional and indigenous communities residing in these areas, given that they were not invited to participate in debates during the drafting of the law (Girardi & Leite, 2016). The only forms of consultation carried out during the law approval process were a hearing from Secretary Patrícia Iglecias (June 2, 2015) and two Public Hearings held in the city of São Paulo (June 11, 2013

and June 16, 2015), with the latter being convened a day in advance, preventing the mobilization of all the communities involved, relying mainly on the presence of representatives of the Guarani indigenous people of Pico do Jaraguá and employees of the environmental system (Sampaio, 2016).

Another question asked was in relation to the period of up to 30 years for the concession of touristic exploration, considered inapplicable for this type of activity, in view of the dynamic profile of tourism (Girardi & Leite, 2016). The long concession period, in principle, makes it possible to interpret that this law is aimed at companies that have sufficient financial capital, that is, large business conglomerates, mainly in the hotel industry (Oliveira, 2015; Amatucci, 2016).

2.1. From Bill 249/13 to Pub. L. 16.260/16

Submitted for approval by the Governor of the State of São Paulo, Geraldo Alckmin (PSDB), on February 1, 2013, the Official Letter SMA/GAB/052, authored by the acting Secretary of the Environment, Bruno Covas (PSDB)⁴, contemplated the draft law that aimed to authorize the São Paulo State Treasury to grant the remunerated use of the Itirapina Experimental Station and the Cajuru Forest, areas under the management of the IF, and the State Parks of Campos do Jordão, Cantareira and Jaraguá, under the management of the FF (ALESP, 2013a).

³ Website that worked as a communication tool developed by the Fundação Florestal Employee Representative Council (CRF) to maintain dialogue between employees, society and the CRF itself (CRF Blog of Fundação Florestal, 2015).

⁴ He served as Secretary of the Environment of the State of São Paulo from 2011 to 2014 (Information provided by the Press Department of the Secretary of Infrastructure and Environment of the State of São Paulo via email on 12/3/2020).

The preliminary draft was then forwarded by the Governor on an emergency basis, pursuant to article 26 of the Constitution of the State of São Paulo (São Paulo, 1989), for deliberation by the State Legislative Assembly on April 30, 2013, and was published in the Official Gazette of the Assembly on May 1, 2013, in the form of Bill n° 249 authored by the Governor of the State (São Paulo, 2013). The bill was sent to the Constitution, Justice and Drafting, Environment and Sustainable Development, and Infrastructure Committees, which were favorable (ALESP, 2013b; 2013c; 2013d).

The proposal awaited a vote from October 2014 until June 2015, when the bill underwent a modification that left open which protected areas could be included that, in practice, made it possible for more than 100 to be available for concession to the private sector and included the possibility of logging. The discussion was suspended for about a year when, on June 1, 2016, government leader Cauê Macris (PSDB) and 21 other deputies⁵ presented the Agglutinative Amendment n° 12, which brought new wording to the bill and delimited the concession of the 25 protected areas contemplated in the published version of the law (Table 1) (ALESP, 2013e; 2020b; Arbex, 2016; Girardi and Leite, 2016). The justification, as stated in the Agglutinative Amendment No. 12 (ALESP, 2020b) was:

During the process in this Legislative House, the project received eleven amendments to the agenda and one amendment presented by the Permanent Commission. In addition, the project was presented in 2013, and since then, some guidelines that guided its elaboration have been changed. Thus, in order to reconcile the various interests involved, the present substitute agglutinative amendment was presented (ALESP, 2020b, emphasis added).

The project then proceeded to a new evaluation by the Constitution, Justice and Drafting Committee on June 7, 2016, where the Agglutinative Amendment n° 12 was approved, with rejection of the previous amendments, leaving it to Deputy Gilmaci Santos (PRB) to transcribe the new wording of Bill n° 249 (ALESP, 2016a). The project was then approved on an urgent basis in the Legislative Assembly on the same day by 63 votes in favor and 17 against, and went on to be sanctioned by the State Governor Geraldo Alckmin on June 8. The bill was sanctioned and published in the Official State Gazette under Pub. L. 16.260 on June 30, 2016 (Girardi & Leite, 2016; ALESP, 2020a). On April 9, 2019, the contract resulting from this law was signed with the concession of services in the State Park Campos do Jordão (Plataforma Digital de Parceiros, 2020).

⁵ Cauê Macris (Leader of the PSDB-Government), Roberto Tripoli (Leader of the PV), Clélia Gomes (Leader of the PHS), Carlão Pignatari (Leader of the PSDB), Fernando Cury (Leader of the PPS), Estevam Galvão (Leader of the DEM), Jorge Caruso (Leader of PMDB), Carlos Cezar (Leader of PSB), Paulo Correa Jr (Leader of PEN), Leci Brandão (Leader of PCdoB), Delegado Olim (Leader of PP), Colonel Camilo (Leader of PSD), Luiz Carlos Gondim (Leader of the SD), Caio França (PSB), Reinaldo Alguz (PV), Celso Nascimento (PSC), Rodrigo Moraes (DEM), Marcos Damasio (PR), Antonio Salim Curiati (PP), Jooji Hato (PMDB), Adilson Rossi (PSB) and Chico Sardelli (PV).

2.2. *The approval process of Bill 249/13*

The Official Letter SMA/GAB/052 of 2013, which was the basis for the bill, describes, in the view of its editor, the reasons which should be considered by the government of the state of São Paulo for the concession of remunerated use of protected areas (ALESP, 2013a). The Itirapina Experimental Station and the Cajuru Forest were in a situation considered "worrying", subject to invasion, with little control of exotic species in contiguous native areas, erosion problems, insufficient administrative resources for correct management, maintenance, inspection and insufficient use of the areas (ALESP, 2013a). Regarding the State Parks of Campos do Jordão, Cantareira and Jaraguá, the Official Letter points out that, for the conservation of these areas, specific actions would be necessary, such as the suppression of exotic species, induction of the regeneration of native vegetation and the renovation and maintenance of the structures intended for public use, management, inspection and protection, especially in firefighting (ALESP, 2013a). In addition to the necessary actions, the economic potential of these areas, mainly tourism, was also presented, indicating an interesting investment for the private initiative.

According to the official letter, the IF budget would not be sufficient to carry out the urgent interventions needed in these protected areas and the financial contribution to the State would be very high due to the limited public budget, not being justified in the face of other needs (ALESP, 2013a). The proposed solution to deal with the situation described as "worrying" in the protected areas would be the concession of remunerated use of management

areas and forest conservation areas. The concession instrument would favor conservation and research, as it would open up the possibility of extracting greater potential from production areas while leaving the State Secretary of Environment (SMA) free to focus on its original objectives with environmental conservation (ALESP, 2013a). In addition, it would be possible to increase the budgetary and administrative structures of the IF (ALESP, 2013a).

Although the draft makes it clear that the contracts resulting from public-private partnerships must ensure compliance with the objectives of the Management Plans and be in accordance with Public Law No. 9.985, from June 18, 2000, which established the Conservation Units National System (SNUC), no guidelines were presented for the type of concession that would be carried out. It was only stated that the concession would be made through a bidding process, where its objectives and characteristics would be defined, notably term, indications and restrictions of use of the area, administration rights and obligations of the concessionaires, including the necessary interventions for its recovery (ALESP, 2013a).

The use of public-private partnerships, and, more specifically, the concession instrument as a public policy, is a strategy commonly used by the Partido da Social Democracia Brasileira (PSDB) since 1995, when the party occupied the Executive Power of the State of São Paulo for the first time, with Mário Covas. According to Dantas (2013), the PSDB has as one of its guidelines the efficient application of public spending in the social area. For the party, financial stability and economic growth inevitably depend on the change in the management pattern of public administration, being necessary to overcome the "bureaucratic public administration"

and move to a managerial administration model, based on the rationalization of public spending. To achieve this objective, the party seeks to put into practice, when it occupies the government, broad administrative reforms that seek the “destatization” of public institutions, based on the discourse that, thus, “the State reduces its role as executor or direct provider of services, maintaining its role as a regulator or promoter of these” (Hidaka, 2012, p. 71). In other words, it consists of implementing a market-oriented state reform, in line with neoliberal logic (Hidaka, 2012). From 1995 to 2016 (year of publication of Pub. L. 16.260), the state of São Paulo was governed by the PSDB, going through nine consecutive terms, which endorsed the maintenance of this discourse, allowing the concession of the most diverse services, including those associated with conservation units⁶.

The technical argument presented in the Official Letter SMA/GAB/052 was based on a series of works started in mid-2012 by the SMA, mainly at the FF and the IF, which included economic feasibility studies, diagnosis of areas, surveys of potential partnerships, among others, with the aim of evaluating the potential for generating income from protected areas and for the adoption of new management strategies for these territories. This initiative was part of the Partnerships Program, one of the priority programs of the Geraldo Alckmin

Government with a focus on the environment⁷, which was granted with the publication of State Decree No. 57.401 on October 6, 2011 (São Paulo, 2011; ALESP, 2013a; 2020b).

The Partnership Program and the elaboration of the Official Letter SMA/GAB/052 were the result of an institutional crisis that had been occurring internally at the Secretary of State for the Environment since the end of 2006 and the beginning of 2007⁸, with the review of the attributions of the FF and IF (São Paulo, 2007). The highlight of this institutional crisis was the publication of two reports in the newspaper “O Estado de São Paulo” on August 24, 2013, in which a series of complaints were presented about the vulnerability of the State Parks of São Paulo, the political rigging of the SMA, and the lack of guidance on the use of resources from environmental compensation in the state of São Paulo, among other problems (Escobar & Girardi, 2013a; 2013b; SMA, 2015).

In response to this crisis and in order to minimize the deterioration of the image of the government of the state of São Paulo and the SMA, the then Secretary of the Environment Bruno Covas turned to former Secretaries Fábio Feldmann⁹ and José Pedro de O. Costa¹⁰, who proposed holding a wide meeting with personalities considered specialists in Conservation Units from all over the country, in order to find a solution. The meeting was held on

⁶ Interviews given by a member of the São Paulo Environmental System and a member of the Legislative Assembly.

⁷ Described by João Gabriel Bruno, who served as executive director of Fundação Florestal from May 2011 to April 2012, as “Projeto Medalha” by Governor Geraldo Alckmin (ALESP, 2020b).

⁸ Interviews given by two members of the São Paulo Environmental System and by a member of the Academy.

⁹ He served as Secretary of the Environment of the State of São Paulo from 1995 to 1998 (Information provided by the Press Department of the Secretary of Infrastructure and Environment of the State of São Paulo via email on 12/3/2020).

¹⁰ He served as Secretary of the Environment of the State of São Paulo from 1986 to 1987 (Information provided by the Press Department of the Secretary of Infrastructure and Environment of the State of São Paulo via email on 12/3/2020).

October 7, 2013 and was attended by more than thirty people, including the former Minister of the Environment José Carlos Carvalho, the former president of IBAMA and ICMBio Rômulo Mello, the environmentalist Ítalo Mazzarella and members of NGOs such as Pedro Passos from SOS Mata Atlântica (SMA, 2015).

From this meeting, the Information and Management System of Protected Areas and Environmental Interest of the State of São Paulo (SIGAP) was created through Decree No. 60.302, from March 27, 2014 (São Paulo, 2014; SMA, 2015). The first SIGAP Advisory Board began its work in July 2014, focusing on four topics related to protected areas: research, monitoring and database; management plans; financial sustainability and management training. For the analysis and discussion of each topic, specific working groups were created formed by members of the Advisory Board and the Environmental System, with the latter highlighting the participation of technicians from the FF and IF (SMA, 2015).

Each group prepared a specific action plan for its theme, highlighting here the “Financial Sustainability of Protected Areas” (Work Group 3 - GT3),

which aimed to contribute to expanding the list of revenues from state CUs, with potential demonstrative effect for federal, municipal and other protected areas (SMA, 2015). Of the proposed actions, we highlight the “identification and evaluation of other current or unpublished mechanisms for obtaining resources for conservation units (concessions, tickets, forest products, antennas, lines, inns)” (SMA, 2015, p. 32), as it was from this initiative that Bill 249/13 was resumed¹¹.

Another important factor in the resumption and processing of Bill 249/13 was the involvement of non-profit organizations, mainly the Semeia Institute and SOS Mata Atlântica, which acted in stimulating and prospecting partnerships between the public sector and the private sector in the management of protected areas¹². Its performance allowed the public authorities and the private sector to discover a market niche that was underdeveloped in the state of São Paulo, mirroring the initiatives of the federal government¹³.

The end of the six-month period foreseen for the execution of the actions/activities contemplated in GT03 coincided with the inauguration of Geraldo Alckmin, in January 2015, for his fourth term as

¹¹ In the 2018 SIGAP Advisory Board Report, which presents a summary of the work carried out in the period from 2014 to 2018, the approval of Pub. L. 16.260/ is mentioned as an advance in actions related to the theme “Financial Sustainability of Conservation Units” (SIGAP, 2018).

¹² Interviews given by a member of the academy, one from the São Paulo Environmental System, one from non-profit organizations, two from the Legislative Assembly and two from traditional communities.

¹³ On 10/20/2011, the Federal Government announced the launch of the pilot project for the concession of conservation units with the national parks of Jericoacoara (CE), Ubajara (CE), Sete Cidades (PI), Serra das Confusões (PI), Anavilhanas (AM), Lençóis Maranhenses (MA), Chapada dos Guimarães (MT), Fernando de Noronha (PE), Itatiaia (RJ) and Serra dos Órgãos (RJ) (Costa, 2011).

¹⁴ Geraldo Alckmin was vice-governor of the State of São Paulo from 1/1/1999 to 3/6/2001, when he took office on an interim basis after the death of Mário Covas. He was reelected in 2002, serving as Governor of the State from 1/1/2003 to 3/30/2006 when he resigned to run for president. He was re-elected in the elections for Governor of the State of São Paulo in 2010 and 2014, serving the term from 1/1/2011 to 4/6/2018, when he resigned from office again to run for president in the 2018 elections (Dantas, 2013, p. 37; O Estado de São Paulo, 2020).

Governor of the State of São Paulo¹⁴ (Folha de São Paulo, 2014). This mandate had the challenge of overcoming a strong economic recession, which began to affect the country as a whole in the second half of 2014, and would last until the fourth quarter of 2016 with a negative average GDP growth rate of 3.7%, accompanied by a drop in revenue and a considerable deterioration in several social indicators (Paula & Pires, 2017; Paula, 2019). Using a campaign focused on tax reform and a broad package of privatization of state-owned companies, Geraldo Alckmin took over the government of the state of São Paulo for a shorter period than usual, considering that on December 9, 2017, he would launch as candidate for the presidency in the 2018 elections and would eventually resign on April 6, 2018 (Folha de São Paulo, 2020; O Estado de São Paulo, 2020).

Considering the reduction of his mandate, it was important for Alckmin in the electoral race for the presidency to have the maximum number of proposals approved and executed in a time of about three years, especially those aligned with his government program and aimed at containing the economic crisis at the state level. With that, the government announced, on November 19, 2015, a package of concessions to the private sector that included highways, airports, intercity bus services and subway lines (Portal do Governo, 2015).

The economic downturn that began in 2014 and the concession package announced in 2015 gave strength to similar projects to be debated again, such as the case of Bill 249/13¹⁵. This was resumed

in June 2015 with a new wording, which opened the possibility of granting the management of more than 100 protected areas. Due to the criticisms raised, the discussion was suspended for about a year when, in June 2016, the bill was resubmitted proposing the concession of the 25 protected areas already mentioned (Table 1), in a so-called attempt to “reconcile the various interests involved”.

2.3. The multiple streams framework applied to the approval process of Bill 249/13

Based on the information gathered, this session will analyze the formulative process of the agenda of service concession in protected areas in the state of São Paulo from the perspective of the Agenda established by Kingdon. In the Multiple Streams Framework, the *stream of problems* represents the situation that has been the focus of public policy-makers' attention (Kingdon, 2006b). In the case of Bill 249/13, when Environment Secretary Bruno Covas described in the Official Letter SMA/GAB/052 the situation of protected areas as worrying, and considered that the State did not have sufficient financial resources to deal with the situation, a demand was made to the Government of the State of São Paulo to deal with a problem, in this case, the problem of the crisis in the management of protected areas. To support the demand and the processing of the bill, indicators were obtained from the works prepared by the FF and the IF from 2012 onwards, in order to assess the potential for genera-

¹⁵ Interviews given by a member of non-profit organizations, one from the São Paulo Environmental System and two from the private sector.

ting income from protected areas and the adoption of new management strategies for these territories.

The *focusing event* that turned the attention of public policy makers to the crisis in the management of protected areas was the aforementioned publication of reports in the newspaper “O Estado de São Paulo”, where the internal crisis of the São Paulo environmental system was publicly exposed along with the vulnerability of protected areas. As a result of the publication of the reports, the state government was forced to act quickly in the search for solutions to the crisis and avoid further erosion of its image.

The *feedbacks* were obtained from the perceptions, complaints and denunciations of NGOs, civil society, local communities and the SMA employees themselves, as, for example, in the letter sent on December 4, 2014 by the Council of Employee Representatives (CRF) from the FF to the Governor, the Public Ministry of the State of São Paulo, Public Prosecutors, SMA and Party Leaders in ALESP. In this letter, institutional aspects were claimed, such as the need to strengthen and consolidate a System of Protected Areas in São Paulo, giving due importance to the FF, and valuing employees (Blog do CRF da Fundação Florestal, 2014).

In the *stream of politics* in the approval process of Bill 249/13, according to five of the interviewe-

es, the influence of interest groups or “powerful agenda makers” (Kingdon, 2006b; Back, 2012; Cunha, 2013) became apparent more by prospecting possible partnerships between the public sector and private non-profit organizations, in an attempt to stimulate an underdeveloped niche, than by pressure from private for-profit companies¹⁶. In parallel with the action of the interest groups, there were many manifestations of opposing groups, who organized themselves to try to stop the progress of the project, proving to be a much greater obstacle than the State Government expected, even with the few mechanisms of participation offered and the short time available with the urgent procedure¹⁷. However, even with strong opposition, the bill was approved.

According to Kingdon's (2006b) model, despite the importance of the influence of interest groups, elections bring new governments and party or ideological configurations, and various interest groups exert pressure to meet their demands (Kingdon, 2006b). The publication of Pub. L. 16.260/16 took place between two elections in which Alckmin ran: the first for Governor of the State, in October 2014 and the second for President, in October 2018. For both elections, the PSDB, headed by Alckmin, formed political coalitions to increase its influence and its chances of being victorious, as shown in Table 2.

¹⁶ Interviews granted by a member of non-profit organizations, two from the São Paulo Environmental System and two from the private sector.

¹⁷ Interview granted by a member of the São Paulo Environmental System.

TABLE 2 – Political coalitions formed by the PSDB in the elections for governor of the state of São Paulo in 2014 and President of Brazil in 2018.

Elections	Coalition	Composition
Governor (2014)	Aqui é São Paulo	PSDB, Democratas (DEM), Partido Ecológico Nacional (PEN), Partido da Mobilização Nacional (PMN), Partido Trabalhista do Brasil (PTdoB), Partido Trabalhista Cristão (PTC), Partido Trabalhista Nacional (PTN), Solidariedade (SD), Partido Popular Socialista (PPS), Partido Republicano Brasileiro (PRB), Partido Socialista Brasileiro (PSB), Partido Social Cristão (PSC), Partido Social Democrata Cristão (PSDC) e Partido Social Liberal (PSL).
President (2018)	Para unir o Brasil	PSDB, Partido Trabalhista Brasileiro (PTB), Partido Progressistas (PP), Partido da República (PR), DEM, SD, PPS, PRB e Partido Social Democrático (PSD).

SOURCE: Adapted from Portal EBC (2015) and Gazeta do Povo (2018).

Although the presidential election took place almost two years after the publication of Pub. L. 16.260/2016, this study did not rule out the possibility that the agreements formed for this coalition influenced the deliberation on the bill, given that it was not possible to identify with precision when the negotiations for the formation of the new coalition began. Even with differences in the formations of both coalitions, when analyzing the distribution of votes by party in the deliberation of Bill 249/13, which took place on June 7, 2020, in the Legislative

Assembly of the State of São Paulo, it is observed that both the coalition formed by the PSDB for the 2014 Governor election as well as the one formed for the 2018 Presidential election had a large participation in the vote, being responsible for more than 60% of the votes in favor of the bill and for more than 40% of the total of 92 votes of the Assembly (Tables 3 and 4). This shows how the agreements formed between political parties during the electoral period may have influenced the approval of Bill 249/13.

TABLE 3 – Distribution of votes by party referring to Bill 249/13 at the 78th Ordinary Session of the Legislative Assembly of the State of São Paulo.

Party	Votes in favor	Votes against	Votes in obstruction ¹⁸
DEM	8	0	1
PC do B	0	1	0
PDT	0	1	1
PEN	1	0	0
PHS	1	0	0
PMDB	5	0	0
PP	2	0	0
PPS	3	0	0
PR	3	0	0
PRB	3	1	1
PSB	3	0	4
PSC	2	0	1
PSD	3	0	0
PSDB	19	1	0
PSL	1	0	0
PSOL	0	2	0
PT	0	11	3
PTB	2	0	0
PTN	1	0	0
PV	5	0	1
SD	1	0	0
Total	63 (68,5 %)	17 (18,5 %)	12 (13 %)

SOURCE: Adapted ALESP (2016b).

In addition to the party configurations formed during the electoral period that allowed the PSDB to have a majority in the Legislative Assembly, the period of almost twenty consecutive years of State

Government under the management of the party, added to the economic downturn that took over the country during the period from 2014 to 2016, it created a favorable climate for proposals aligned with neoliberal logic, such as the concession of services in protected areas, to gain prominence.

The re-election of Geraldo Alckmin (October 2014) led to a change of Secretary for the Environment, with the departure of Rizek Jr. (December 2014) and the inauguration of Patrícia Iglesias (January 2015). Iglesias would remain in office until July 17, 2016, one month after the approval of Pub. L. 16.260/16. These changes, allied to the urgency regime for processing the bill, could indicate the construction of the agenda for the candidacy of Geraldo Alckmin for the 2018 presidential elections, signaling to the market its position regarding the environmental area.

In the case of the *policies* stream (Kingdon, 2006b; Back, 2012), the solution proposed in the Official Letter SMA/GAB/052 and endorsed at the SIGAP Advisory Board meeting, was the adoption of the service concession instrument to deal with the crisis in the management of protected areas (ALESP, 2013a; SMA, 2015). The adoption of the service concession was an attempt by the PSDB to replicate the public-private partnership formula used since its first mandates at the head of the executive branch in other sectors, such as transport¹⁹, and apply it in the environmental sector. The concession package announced by the State Government in 2015 paved the way for the resumption of the bill, which had been awaiting a vote since October 2014.

¹⁸ “In a broad sense, it is the use, by parliamentarians, of all regimental means to delay or prevent the vote on a given matter. The most used mechanisms are pronouncements, requests for adjournment of the discussion and voting and departure from the Plenary to avoid a quorum. In a strict sense, it is the instrument used to avoid the vote on a certain matter, announced by the leader of the party or bloc, causing the parliamentarians led not to consider their presence for the deliberation quorum” (National Congress, 2020).

TABLE 4 – Distribution of votes in favor of Bill 249/13 at the 78th Ordinary Session of the Legislative Assembly of State of São Paulo by coalition.

Party	Coalition "Aqui é São Paulo"	Coalition "Para unir o Brasil"
DEM	8	8
PEN	1	-
PP	-	2
PPS	3	3
PRB	3	3
PSB	3	-
PSC	2	-
PSD	-	3
PSDB	19	19
PSL	1	-
PTB	-	2
PTN	1	-
SD	1	-
Total	42 (66,7 %)	40 (63,5 %)

FONTE: Adaptado de Portal EBC (2015), ALESP (2016b) e Gazeta do Povo (2018).

In the process of approving the Bill, the group of visible actors was formed by the Governor, the Secretaries of the Environment²⁰ who exercised their mandates during its approval process, members of the FF and IF boards, members of the Legislative Assembly who voted in favor of approving the project, the members of the Advisory Board of SIGAP and participants in the meeting that gave rise to SIGAP. The group of invisible actors was formed by career employees of the São Paulo environmental system who formulated the studies that formed the basis for the Official Letter SMA/

GAB/052, SEMEIA and SOS Mata Atlântica, which worked to foster partnerships between the public sector and the private initiative in the management of protected areas, without disregarding others that were not identified in this work.

The main public policy entrepreneurs identified in this study were the State Environment Secretary at the time, Bruno Covas, for presenting the Official Letter SMA/GAB/052 and articulating the meeting that gave rise to SIGAP, and the State Governor. Alckmin determined that the bill would be processed on an urgent basis, which allowed its approval in an approximate period of 3 years (2013-2016). The request for an emergency regime is an exclusive prerogative of the Governor, as provided for in article 26 of the Constitution of the State of São Paulo (São Paulo, 1989). In addition, his re-election was fundamental for the project's approval, as it allowed him to acquire sufficient political capital involving partnerships between the public sector and the private sector, the focus of his electoral campaign, under the justification of cost containment in the face of the economic downturn. Bruno Covas, on the other hand, took a leading role in the bill's approval process, seeing in its approval a possibility of leveraging his political career by stimulating a new market niche in the state of São Paulo²¹.

According to information gathered²², it was also possible to identify other entrepreneurs such as SEMEIA, Fundação SOS Mata Atlântica, members of the Advisory Board of SIGAP and the participants of the meeting that gave rise to SIGAP. SEMEIA is

¹⁹ The São Paulo State Highway Concessions Program was established in March 1998, during the government of Mário Covas (ARTESP, 2020).

a non-profit civil society organization (CSO) whose main objective is to foster partnerships between the public sector and the private sector in the management of natural and urban parks. Fundação SOS Mata Atlântica is a Brazilian environmental non-governmental organization that works to promote public policies for the conservation of the Atlantic Forest. These actors influenced the resumption and support of the bill after Bruno Covas left the SMA to run for Federal Deputy in 2014.

Geraldo Alckmin's importance as a public policy entrepreneur is reinforced by the fact that his reelection in October 2014, opened a window

of opportunity for public policy. Upon taking office, Alckmin changed the Secretary of the Environment by appointing Patrícia Iglesias to the position. According to the information presented, this period can be considered as a policy window, because it was an opportunity for the use of the service concession instrument as a solution to the management crisis in protected areas to be defended as the ideal solution, given the favorable political environment. Figure 2 shows the diagram of the MSF applied to the approval process of Bill 249/13, based on the data collected in this research.

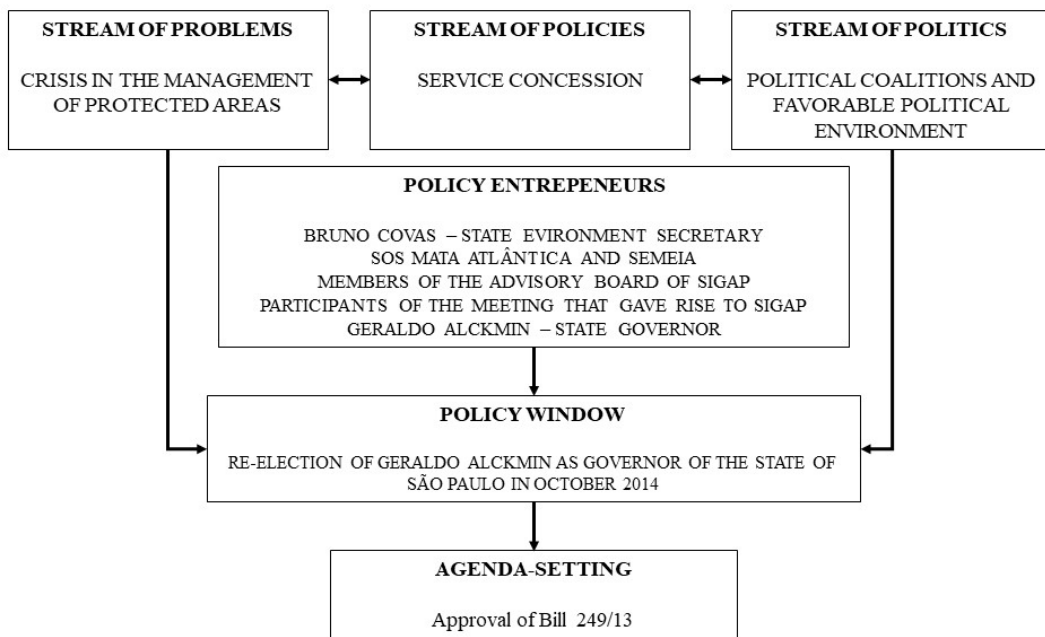


FIGURE 2 – Multiple Streams Framework applied to the approval process of Bill 249/2013.

²⁰ Bruno Covas (2011-2014), Rubens Naman Rizek Junior (2014) and Patricia Iglesias (2015 to 2016) (Information provided by the Press Department of the Secretariat of Infrastructure and Environment of the State of São Paulo via email on 3 /12/2020).

²¹ Interviews given by two members of the São Paulo Environmental System.

²² Interviews given by two members of the Legislative Assembly, one from the Academy, one from the São Paulo Environmental System, one from non-profit organizations and two from traditional communities.

3. Discussion and conclusion

The data collected and triangulated showed that, in the case of the approval process of Bill 249/13, the lack of opportunities for involvement offered to local communities, NGOs and employees of the São Paulo environmental system, groups that are more active in protected areas and that hold most of the technical and traditional knowledge of these areas, raised several questions about the objectives of the bill, and the environmental and social impacts that could arise from the application of concession contracts after the publication of Pub. L. 16.260. The climate of insecurity worsened when the Governor chose to process the project on an urgent basis. The inexistence of reasonable justifications for this, added to a non-participatory process, only served to increase speculation that the real intention of the Government of the State of São Paulo would be precisely to hinder popular participation in the bill debate.

The application of Kingdon's (2006b) perspective allowed us to understand that the process of forming the service concession agenda in protected areas in the state of São Paulo was motivated by a crisis in the management of protected areas, but the choice of service concession as a solution for this problem had more influence from its participants and the favorable political environment than the effectiveness of this instrument itself. It was also possible to identify the agents that contributed to the movement of the bill within the political environment.

In addition to the problems described in Official Letter SMA/GAB/052, conservation units suffer from budgetary and personnel problems. This

situation could worsen with the publication of Pub. L. 17.293, of October 15, 2020, which, among other determinations, extinguishes the IF, responsible for managing state protected areas together with the FF (São Paulo, 2020). It is also worth remembering that, as of 2019, the Secretary of the Environment lost its status, becoming an Undersecretary within the structure of the Secretary of Infrastructure and the Environment (SIMA).

As the publication of the law is relatively recent and the first concession agreement was only signed on April 4, 2019, the impacts of Pub. L. 16.260/16 need to be monitored and reassessed in the future. Finally, other studies that could contribute to enrich this discussion, filling gaps observed in this study and for which little material was found, would include a survey on the history of the environmental movement in São Paulo, which would allow a deeper understanding of the conception that the Government State holds about its protected areas and natural resources, since the creation of the Secretary of the Environment.

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[br/2016/09/26/conheca-o-pl-24913-projeto-de-alckmin-que-deve-privatizar-25-parques-publicos-estaduais-2/](http://democratizemidia.com.br/2016/09/26/conheca-o-pl-24913-projeto-de-alckmin-que-deve-privatizar-25-parques-publicos-estaduais-2/)>. Acesso em: jun. 2018.

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