

Assembly Bill No. 979

Passed the Assembly August 24, 2010

Chief Clerk of the Assembly

Passed the Senate August 23, 2010

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2010, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Sections 1020 and 1021 to the Fish and Game Code, relating to fish and game.

LEGISLATIVE COUNSEL'S DIGEST

AB 979, Tom Berryhill. Hunting or fishing: local regulation.

The California Constitution provides for the delegation to the Fish and Game Commission of powers relating to the protection and propagation of fish and game. Existing statutory law delegates to the commission the power to regulate the taking or possession of birds, mammals, fish, amphibia, and reptiles in accordance with prescribed laws. Under existing law, the Department of Fish and Game exercises various functions with regard to the taking of fish and game. Under existing law, a city or county exercises certain limited authority with regard to the regulation of fish and game for the protection of public health and safety.

This bill would provide that the state fully occupies the fields of hunting and fishing. The bill would prohibit a city or county from adopting an ordinance or regulation that affects hunting or fishing, unless the ordinance or regulation is both necessary to protect public health and safety and has only an incidental impact on the fields of hunting and fishing preempted by state law. The bill would also provide that unless otherwise authorized by the Fish and Game Code or other state or federal law, the commission and the department are the only entities that shall adopt or promulgate regulations regarding hunting and fishing on any lands or waters within the state, except as specified. The bill would apply only to activities for which a hunting or fishing license is required by the Fish and Game Code or regulations adopted by the commission.

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

SECTION 1. Section 1020 is added to the Fish and Game Code, to read:

1020. (a) The Legislature finds and declares all of the following:

(1) The California Supreme Court in *In re Makings* (1927) 200 Cal. 474, determined that Section 25½ of Article IV of the California Constitution, as currently set forth in Section 20 of Article IV, prohibits local governmental entities from regulating, or interfering with, fish and game matters and places this responsibility with the Legislature in order to conserve California's fish and wildlife populations and permit the largest use of fish and game compatible with the reasonable protection thereof.

(2) The Fish and Game Commission was established in 1870 to assist in the science-based management of California's fish and wildlife resources. The California Constitution permits the Legislature to delegate to the commission certain powers relating to the management of fish and game, and the Legislature has delegated to the commission regulatory powers over the taking and possession of fish and game, as set forth in this code.

(3) Hunting and fishing are statistically among the safest outdoor recreational activities, particularly as they relate to impacts on the general public, and are already well regulated by the state through mandatory safety and education requirements, weapons laws, and regulations adopted by the commission. Additional local regulation significantly impedes the uniform, science-based administration of state fish and game laws. Hunting and fishing activities are also compatible with other recreational uses on many public lands and waters throughout the state.

(b) In enacting this section and Section 1021, it is the intent of the Legislature to affirm, subject to applicable state and federal law, the exclusive legal authority granted to the commission and the department with regard to the taking and possession of fish and game and thereby ensure necessary comprehensive statewide control by the commission and the department over all fish and game matters for wildlife conservation purposes and the protection of, and access to, hunting and fishing opportunities for private landowners and the public.

SEC. 2. Section 1021 is added to the Fish and Game Code, to read:

1021. (a) (1) The state fully occupies the fields of hunting and fishing pursuant to this code, regulations adopted by the commission pursuant to this code, and Section 20 of Article IV of the California Constitution, and all local ordinances and regulations are subject to this section.

(2) A city or county shall not adopt an ordinance or regulation within its jurisdiction that affects hunting or fishing unless the ordinance or regulation is both necessary to protect public health and safety and has only an incidental impact on the fields of hunting and fishing preempted by state law. The ordinance or regulation shall not indiscriminately extend or apply to any areas where hunting and fishing may occur without endangering public health and safety nor to any lands or waters owned or managed by the state or federal government.

(b) The commission, the department, or any other governmental entity legally authorized to affect hunting and fishing on navigable waters held in public trust shall ensure, to the extent possible, that the fishing and hunting rights of the public guaranteed under Section 25 of Article I of, and Section 4 of Article X of, the California Constitution, are protected in a manner consistent with those provisions.

(c) (1) Unless otherwise authorized by this code or other state or federal law, the commission and the department are the only entities in this state that shall adopt or promulgate regulations regarding hunting and fishing on any lands or waters within the state.

(2) Nothing in this section or Section 1020 prohibits a public or private landowner, or the landowner's designee, from regulating public access or public use on property that the landowner owns in fee, leases, manages, holds an easement upon, or is otherwise lawfully authorized to control for those purposes, in a manner consistent with state law.

(d) This section applies only to activities for which a hunting or fishing license is required by this code or regulations adopted by the commission.

Approved _____, 2010

Governor