

ASSEMBLY BILL

No. 665

Introduced by Assembly Member Frazier

February 24, 2015

An act to amend Section 203.1 of, and to add Sections 200.5 and 200.6 to, the Fish and Game Code, relating to fish and wildlife.

LEGISLATIVE COUNSEL'S DIGEST

AB 665, as introduced, Frazier. Hunting or fishing: local regulation.

(1) 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 Wildlife exercises various functions with regard to the taking of fish and game. Under existing law, a city or county has no authority to regulate fish and game except that a city or county may adopt an ordinance that incidentally affects fishing and hunting for the protection of public health and safety.

This bill would provide that the state fully occupies the field of the taking and possession of fish and game. The bill would prohibit a city or county from adopting an ordinance or regulation relating to the taking or possession of fish and game. 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 may adopt or promulgate regulations regarding the taking or possession of fish and game on any lands or waters within the state.

(2) Existing law requires the commission, when adopting certain regulations relating to the take of resident game birds, game mammals,

and fur-bearing mammals, to consider populations, habitat, food supplies, the welfare of individual animals, and other pertinent facts and testimony.

This bill would require the commission to consider these factors when adopting certain regulations relating to the take of fish, amphibians, and reptiles. The bill would also require the commission to consider public health and safety when adopting these regulations.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

1 SECTION 1. Section 200.5 is added to the Fish and Game
2 Code, to read:
3 200.5. (a) The Legislature finds and declares all of the
4 following:
5 (1) The California Supreme Court in *In re Makings* (1927) 200
6 Cal. 474, determined that Section 25 ½ of Article IV of the
7 California Constitution, as currently set forth in Section 20 of
8 Article IV, prohibits local governmental entities from regulating,
9 or interfering with, fish and game matters in any manner and places
10 this responsibility with the Legislature in order to conserve
11 California’s fish and wildlife and permit the greatest use of fish
12 and game resources compatible with the reasonable protection
13 thereof.
14 (2) The commission was established in 1870 to assist in the
15 scientific, evidence-based management of California’s fish and
16 wildlife resources. The California Constitution permits the
17 Legislature to delegate to the commission certain powers relating
18 to the management of fish and game, and the Legislature has
19 delegated to the commission regulatory powers over the taking
20 and possession of fish and game, as set forth in this code.
21 (3) Hunting and fishing are statistically among the safest outdoor
22 recreational activities, and are already well regulated by the state
23 through mandatory safety and education requirements, firearms
24 laws, and regulations adopted by the commission. Additional local
25 regulation would impede the proper administration of state fish
26 and game laws and would create significant enforcement issues.
27 Hunting and fishing activities are also compatible with other

1 recreational uses on many public lands and waters throughout the
2 state.

3 (b) In enacting this section and Section 200.6, it is the intent of
4 the Legislature to affirm, subject to applicable federal law, the
5 exclusive legal authority granted to the commission and the
6 department with regard to the taking and possession of fish and
7 game and thereby ensure necessary statewide control by the
8 commission and the department over fish and game matters for
9 wildlife conservation purposes and the protection of, and access
10 to, hunting and fishing opportunities for the public.

11 SEC. 2. Section 200.6 is added to the Fish and Game Code, to
12 read:

13 200.6. (a) (1) The state fully occupies the field of the taking
14 and possession of fish and game pursuant to this code, regulations
15 adopted by the commission pursuant to this code, and Section 20
16 of Article IV of the California Constitution, and all local ordinances
17 and regulations are subject to this section.

18 (2) A city or county shall not adopt an ordinance or regulation
19 within its jurisdiction relating to the taking or possession of fish
20 and game.

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

27 (c) (1) Unless expressly authorized by this code or federal law,
28 the commission and the department are the only entities in the state
29 that may adopt or promulgate regulations regarding the taking or
30 possession of fish and game on any lands or waters within the
31 state.

32 (2) Nothing in this section or Section 200.5 prohibits a public
33 or private landowner, or the landowner's designee, from controlling
34 public access or public use, including hunting or fishing, on
35 property that the landowner owns in fee, leases, holds an easement
36 upon, or is otherwise expressly authorized to control for those
37 purposes in a manner consistent with state law.

38 SEC. 3. Section 203.1 of the Fish and Game Code is amended
39 to read:

1 203.1. When adopting regulations pursuant to Section ~~203~~,
2 ~~203~~ or 205, the commission shall consider populations, habitat,
3 food supplies, the welfare of individual animals, *public health and*
4 *safety*, and other pertinent facts and testimony.

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