

AMENDED IN SENATE AUGUST 2, 2016
AMENDED IN SENATE JUNE 22, 2016
AMENDED IN ASSEMBLY MAY 12, 2016
AMENDED IN ASSEMBLY APRIL 25, 2016
AMENDED IN ASSEMBLY APRIL 12, 2016
AMENDED IN ASSEMBLY MARCH 16, 2016
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2148

Introduced by Assembly Member Holden

February 17, 2016

An act to amend Section 3003.5 of, and to add Sections 1746 and 2001.5 to, the Fish and Game Code, and to add Article 4 (commencing with Section 5085) to Chapter 1.2 of Division 5 of the Public Resources Code, relating to unmanned aircraft systems.

LEGISLATIVE COUNSEL'S DIGEST

AB 2148, as amended, Holden. Unmanned aircraft systems: managed lands or waters: take of fish and wildlife.

Existing federal law, the Federal Aviation Administration Modernization and Reform Act of 2012, provides for the integration of civil and public unmanned aircraft systems, commonly known as drones, into the national airspace system. Existing law establishes both the Department of Fish and Wildlife and the Department of Parks and Recreation in the Natural Resources Agency. A violation of any rule or regulation made or adopted by the Department of Fish and Wildlife pursuant to the Fish and Game Code is a misdemeanor. A violation of

the rules and regulations established by the Department of Parks and Recreation to protect the state park system is punishable as either a misdemeanor or an infraction.

This bill would make it unlawful for any person to launch, land, or operate an unmanned aircraft system from *or within lands, waters, or airspace managed by the* Department of Fish and Wildlife and Department of Parks and ~~Recreation managed lands or waters, Recreation~~, except as authorized by these departments, or unless exempted from this prohibition. The bill would authorize the departments to consider certain factors when reviewing a request for the departments’ authorization for the use of an unmanned aircraft system.

The bill would also make it unlawful to use an unmanned aircraft system to take, or assist in the ~~take~~ *taking* of, fish or wildlife, including, but not limited to, the use of unmanned aircraft systems for scouting purposes. The bill would provide that an unmanned aircraft system is a motorized air vehicle within the meaning of a certain existing prohibition ~~and thus~~ *and, thus*, under that prohibition may not be used to pursue, drive, or herd any bird or mammal, ~~except as specified.~~ *specified, including, among other things, specified permits and notices.*

Because violations of the provisions of the bill would be crimes, the bill would impose a state-mandated local program.

The bill would provide that certain of its provisions are severable and do not apply to the operation of an unmanned aircraft system by any person who the Federal Aviation Administration authorizes to operate a remote piloted aircraft for a commercial purpose and who operates it in a manner that complies with that authorization.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

- 1 *SECTION 1. It is the intent of the Legislature that the state*
- 2 *fully cooperate with the Federal Aviation Administration regarding*
- 3 *the appropriate division of responsibility for the regulation of*

1 *unmanned aircraft systems between the federal and state*
2 *governments so that the state may reserve and fully exercise any*
3 *and all appropriate authority pursuant to federal laws as they exist*
4 *in their current form and as they may be further amended hereafter.*

5 SECTION 1.

6 SEC. 2. Section 1746 is added to the Fish and Game Code, to
7 read:

8 1746. (a) It shall be unlawful for any person to launch, land,
9 or operate an unmanned aircraft system from ~~department managed~~
10 *department-managed* lands, as defined in Section 1745, *or within*
11 *department-managed airspace*, except as authorized by the
12 department, or unless otherwise exempted from this section.

13 (b) ~~In reviewing a request for department authorization for the~~
14 ~~use of an unmanned aircraft system, the department may consider~~
15 ~~any of the following:~~

16 (1) ~~Protecting wildlife and visitors from unnecessary harassment~~
17 ~~or disturbance.~~

18 (2) ~~Harm to sensitive species, including those listed as threatened~~
19 ~~or endangered, or that have other protected status.~~

20 (3) ~~Disruption to wildlife at times of the year where incidents~~
21 ~~may have disproportionate effects, including, but not limited to,~~
22 ~~during nesting, breeding, gestation, and migration seasons.~~

23 (4) ~~The natural, cultural, and historic value of the~~
24 ~~department-managed land.~~

25 (5) ~~The purpose of the department-managed land.~~

26 (6) ~~Operation of an unmanned aircraft system in a careless or~~
27 ~~reckless manner, including an operator's failure to adhere to visual~~
28 ~~line-of-sight practices.~~

29 (7) ~~Other special purposes as approved by the department.~~

30 (b) *The prohibition in subdivision (a) pertaining to the operation*
31 *of unmanned aircraft systems within department-managed airspace*
32 *does not apply to the operation of an unmanned aircraft system*
33 *by a person whom the Federal Aviation Administration, whether*
34 *by permit, license, rule, or regulation, authorizes to operate a*
35 *remotely piloted aircraft for a commercial purpose and that is*
36 *operated in a manner that complies with that authorization and*
37 *the applicable regulations of the department.*

38 (c) The prohibition in subdivision (a) does not apply to any of
39 the following:

1 (1) The appropriate use of unmanned aircraft systems for
2 conservation and scientific research purposes.

3 ~~(2) De minimis access by adjacent landowners for agricultural~~
4 ~~purposes.~~

5 ~~(3)~~

6 (2) Legitimate ~~news-gathering~~ *news-gathering* activity by a
7 person described in Section 1070 of the Evidence Code.

8 ~~(d) This section does not apply to the operation of an unmanned~~
9 ~~aircraft system by any person who the Federal Aviation~~
10 ~~Administration, whether by permit, license, rule, or regulation,~~
11 ~~authorizes to operate a remote piloted aircraft for a commercial~~
12 ~~purpose and who operates it in a manner that complies with that~~
13 ~~authorization.~~

14 *(d) The department may draft regulations consistent with this*
15 *section and the Administrative Procedure Act (Chapter 3.5*
16 *(commencing with Section 11340) of Part 1 of Division 3 of Title*
17 *2 of the Government Code).*

18 *(e) In reviewing a request to use an unmanned aircraft system*
19 *and in drafting the regulations authorized pursuant to subdivision*
20 *(d), the department may consider any of the following:*

21 *(1) Protection of wildlife and visitors from harassment or*
22 *disturbance.*

23 *(2) Harm to sensitive species, including those listed as*
24 *threatened or endangered or that have other protected status.*

25 *(3) Disruption to wildlife at times of the year when incidents*
26 *may have adverse effects, including, but not limited to, nesting,*
27 *breeding, gestation, and migration seasons.*

28 *(4) The natural, cultural, and historic value of the*
29 *department-managed lands.*

30 *(5) The purpose of the department-managed lands.*

31 *(6) Operation of an unmanned aircraft system in a careless or*
32 *reckless manner, including an operator’s failure to adhere to visual*
33 *line-of-sight practices.*

34 *(7) Other special purposes as approved by the department.*

35 ~~(e)~~

36 *(f) The provisions of this section are severable. If any provision*
37 *of this section or its application is held invalid, that invalidity shall*
38 *not affect other provisions or applications that can be given effect*
39 *without the invalid provision or application.*

1 ~~SEC. 2.~~

2 *SEC. 3.* Section 2001.5 is added to the Fish and Game Code,
3 to read:

4 2001.5. It shall be unlawful to use an unmanned aircraft system
5 to take, or assist in the ~~take~~ *taking* of, fish or wildlife, including,
6 but not limited to, the use of unmanned aircraft systems for
7 scouting purposes.

8 ~~SEC. 3.~~

9 *SEC. 4.* Section 3003.5 of the Fish and Game Code is amended
10 to read:

11 3003.5. It is unlawful to pursue, drive, or herd any bird or
12 mammal with any motorized water, land, or air vehicle, including,
13 but not limited to, a motor vehicle, airplane, unmanned aircraft
14 system, powerboat, or snowmobile, except in any of the following
15 circumstances:

16 (a) On private property by the landowner or tenant thereof to
17 haze birds or mammals for the purpose of preventing damage by
18 that wildlife to private property.

19 (b) Pursuant to a permit from the department issued under
20 regulations as the commission may prescribe. *With respect to*
21 *unmanned aircraft systems, this subdivision shall include a lawful*
22 *predation permit issued by the department, notice to the department*
23 *of the intended use of an unmanned aircraft system, approval from*
24 *the department, and notice to the landowner.*

25 (c) In the pursuit of agriculture.

26 ~~SEC. 4.~~

27 *SEC. 5.* Article 4 (commencing with Section 5085) is added
28 to Chapter 1.2 of Division 5 of the Public Resources Code, to read:

29

30 Article 4. Unmanned Aircraft Systems

31

32 5085. (a) It shall be unlawful for any person to launch, land,
33 or operate an unmanned aircraft system from ~~Department of Parks~~
34 ~~and Recreation managed lands or waters, department-managed~~
35 ~~lands or waters or within department-managed airspace, except~~
36 as authorized by the department, or unless otherwise exempted
37 from this article.

38 (b) ~~In reviewing a request for department authorization for the~~
39 ~~use of an unmanned aircraft system, the department may consider~~
40 any of the following:

- 1 ~~(1) Protecting wildlife and visitors from unnecessary harassment~~
- 2 ~~or disturbance.~~
- 3 ~~(2) Harm to sensitive species, including those listed as threatened~~
- 4 ~~or endangered, or that have other protected status.~~
- 5 ~~(3) Disruption to wildlife at times of the year where incidents~~
- 6 ~~may have disproportionate effects, including, but not limited to,~~
- 7 ~~during nesting, breeding, gestation, and migration seasons.~~
- 8 ~~(4) The natural, cultural, and historic value of the managed land~~
- 9 ~~or water.~~
- 10 ~~(5) The purpose of the department managed land or water.~~
- 11 ~~(6) Operation of an unmanned aircraft system in a careless or~~
- 12 ~~reckless manner, including an operator’s failure to adhere to visual~~
- 13 ~~line-of-sight practices.~~
- 14 ~~(7) Other special purposes as approved by the department.~~
- 15 ~~(b) The prohibition in subdivision (a) pertaining to the operation~~
- 16 ~~of unmanned aircraft systems within department-managed airspace~~
- 17 ~~does not apply to the operation of an unmanned aircraft system~~
- 18 ~~by a person whom the Federal Aviation Administration, whether~~
- 19 ~~by permit, license, rule, or regulation, authorizes to operate a~~
- 20 ~~remotely piloted aircraft for a commercial purpose and that is~~
- 21 ~~operated in a manner that complies with that authorization and~~
- 22 ~~the applicable regulations of the department.~~
- 23 ~~(c) The prohibition in subdivision (a) does not apply to any of~~
- 24 ~~the following:~~
- 25 ~~(1) The appropriate use of unmanned aircraft systems for~~
- 26 ~~conservation and scientific research purposes.~~
- 27 ~~(2) De minimis access by adjacent landowners for agricultural~~
- 28 ~~purposes.~~
- 29 ~~(3)~~
- 30 ~~(2) Legitimate news-gathering~~ *news-gathering* ~~activity by a~~
- 31 ~~person described in Section 1070 of the Evidence Code.~~
- 32 ~~(d) This section does not apply to the operation of an unmanned~~
- 33 ~~aircraft system by any person who the Federal Aviation~~
- 34 ~~Administration, whether by permit, license, rule, or regulation,~~
- 35 ~~authorizes to operate a remote piloted aircraft for a commercial~~
- 36 ~~purpose and who operates it in a manner that complies with that~~
- 37 ~~authorization.~~
- 38 ~~(d) The department may draft regulations consistent with this~~
- 39 ~~section and the Administrative Procedure Act (Chapter 3.5~~

1 (commencing with Section 11340) of Part 1 of Division 3 of Title
2 2 of the Government Code).

3 (e) In reviewing a request to use an unmanned aircraft system
4 and in drafting the regulations authorized pursuant to subdivision
5 (d), the department may consider any of the following:

6 (1) Protection of wildlife and visitors from harassment or
7 disturbance.

8 (2) Harm to sensitive species, including those listed as
9 threatened or endangered or that have other protected status.

10 (3) Disruption to wildlife at times of the year when incidents
11 may have adverse effects, including, but not limited to, nesting,
12 breeding, gestation, and migration seasons.

13 (4) The natural, cultural, and historic value of the
14 department-managed lands.

15 (5) The purpose of the department-managed lands.

16 (6) Operation of an unmanned aircraft system in a careless or
17 reckless manner, including an operator’s failure to adhere to visual
18 line-of-sight practices.

19 (7) Other special purposes as approved by the department.

20 (e)

21 (f) The provisions of this section are severable. If any provision
22 of this section or its application is held invalid, that invalidity shall
23 not affect other provisions or applications that can be given effect
24 without the invalid provision or application.

25 ~~SEC. 5.~~

26 SEC. 6. No reimbursement is required by this act pursuant to
27 Section 6 of Article XIII B of the California Constitution because
28 the only costs that may be incurred by a local agency or school
29 district will be incurred because this act creates a new crime or
30 infraction, eliminates a crime or infraction, or changes the penalty
31 for a crime or infraction, within the meaning of Section 17556 of
32 the Government Code, or changes the definition of a crime within
33 the meaning of Section 6 of Article XIII B of the California
34 Constitution.