

Assembly Bill No. 2148

Passed the Assembly August 30, 2016

Chief Clerk of the Assembly

Passed the Senate August 23, 2016

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2016, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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, Holden. Unmanned aircraft systems: operation or use within or over state-managed lands or waters.

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 operate an unmanned aircraft system in, or fly an unmanned aircraft system over, lands or waters managed by the Department of Fish and Wildlife and Department of Parks and Recreation, except as authorized or unless exempted from this prohibition. The bill would authorize the consideration of certain factors when reviewing a request for 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 of, fish or wildlife for sport purposes, 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, under that prohibition may not be used to pursue, drive, or herd any bird or

mammal, except as 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 a state agency within or over these managed lands or waters, or to any person whom the Federal Aviation Administration authorizes to operate an unmanned aircraft system 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.

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

SECTION 1. It is the intent of the Legislature that the state fully cooperate with the Federal Aviation Administration regarding the appropriate division of responsibility for the regulation of unmanned aircraft systems between the federal and state governments so that the state may reserve and fully exercise any and all appropriate authority pursuant to federal laws as they exist in their current form and as they may be further amended hereafter.

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

1746. (a) It shall be unlawful for any person to operate an unmanned aircraft system in, or fly an unmanned aircraft system over, the department's managed lands or waters, except as authorized by the department, or unless otherwise exempted from this section.

(b) The prohibition in subdivision (a) does not apply to the operation of an unmanned aircraft system by a state agency within or over department-managed lands or waters, or to any person whom the Federal Aviation Administration, whether by permit, license, rule, or regulation, authorizes to operate an unmanned aircraft system for a commercial purpose and that is operated in a

manner that complies with that authorization and the applicable regulations of the commission.

(c) The prohibition in subdivision (a) does not apply to legitimate news-gathering activity by a person described in Section 1070 of the Evidence Code.

(d) The commission may draft regulations consistent with this section and the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). In drafting the regulations, the commission shall maintain the authority to limit or revoke approved requests for the use of an unmanned aircraft system due to changing natural conditions or land management requirements.

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

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

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

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

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

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

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

(7) De minimis access by adjacent landowners for bona fide agricultural purposes.

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

(9) Authorization for pursuit and take for depredation purposes pursuant to Sections 3003.5 and 4181.

(10) Other special purposes as approved by the department.

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

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

2001.5. It shall be unlawful to use an unmanned aircraft system to take, or assist in the take of, fish or wildlife for sport purposes, including, but not limited to, the use of unmanned aircraft systems for scouting purposes.

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

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

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

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

(c) In the pursuit of agriculture.

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

Article 4. Unmanned Aircraft Systems

5085. (a) It shall be unlawful for any person to operate an unmanned aircraft system in, or fly an unmanned aircraft system over, Department of Parks and Recreation managed lands or waters, except as authorized by the department, or unless otherwise exempted from this article.

(b) The prohibition in subdivision (a) does not apply to the operation of an unmanned aircraft system by a state agency within or over department-managed lands or waters, or to any person whom the Federal Aviation Administration, whether by permit, license, rule, or regulation, authorizes to operate an unmanned aircraft system for a commercial purpose and that is operated in a

manner that complies with that authorization and the applicable regulations of the department.

(c) The prohibition in subdivision (a) does not apply to legitimate news-gathering activity by a person described in Section 1070 of the Evidence Code.

(d) The department may draft regulations consistent with this section and the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). In drafting the regulations, the department shall maintain the authority to limit or revoke approved requests for the use of an unmanned aircraft system due to changing natural conditions or land management requirements.

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

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

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

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

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

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

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

(7) De minimis access by adjacent landowners for bona fide agricultural purposes.

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

(9) Other special purposes as approved by the department.

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

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school

district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2016

Governor