

AMENDED IN SENATE AUGUST 18, 2010  
AMENDED IN SENATE JULY 14, 2009  
AMENDED IN SENATE JULY 1, 2009  
AMENDED IN ASSEMBLY MAY 18, 2009  
AMENDED IN ASSEMBLY MAY 6, 2009  
AMENDED IN ASSEMBLY APRIL 15, 2009  
AMENDED IN ASSEMBLY APRIL 2, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 979**

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**Introduced by Assembly Member Tom Berryhill**

February 27, 2009

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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, as amended, 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 ~~field~~ *fields* of hunting and fishing. The bill would prohibit a city or county from adopting an ordinance or regulation that affects ~~the taking of fish and game hunting or fishing~~, unless the ordinance or regulation is both necessary ~~for to protect~~ public health and safety and has only an incidental impact on the ~~field~~ *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 ~~may~~ *shall* adopt or promulgate regulations regarding ~~the taking of fish and game hunting and fishing~~ on any lands or waters within the state, except as specified. The bill would ~~exempt from its provisions local ordinances and regulations that regulate trapping~~ *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.*

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 1020 is added to the Fish and Game Code,
- 2 to read:
- 3 1020. (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 and places this
- 10 responsibility with the Legislature in order to conserve California’s
- 11 fish and wildlife populations and permit the largest use of fish and
- 12 game compatible with the reasonable protection thereof.
- 13 (2) The Fish and Game Commission was established in 1870
- 14 to assist in the science-based management of California’s fish and
- 15 wildlife resources. The California Constitution permits the
- 16 Legislature to delegate to the commission certain powers relating
- 17 to the management of fish and game, and the Legislature has

1 delegated to the commission regulatory powers over the taking  
2 and possession of fish and game, as set forth in this code.

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

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

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

23 1021. (a) (1) The state fully occupies the ~~field~~ *fields* of hunting  
24 and fishing pursuant to this code, regulations adopted by the  
25 commission pursuant to this code, and Section 20 of Article IV of  
26 the California Constitution, and all local ordinances and regulations  
27 are subject to this section.

28 (2) A city or county shall not adopt an ordinance or regulation  
29 *within its jurisdiction* that affects ~~the taking of fish and game~~  
30 *hunting or fishing* unless the ordinance or regulation is both  
31 necessary ~~for~~ *to protect* public health and safety and has only an  
32 incidental impact on the ~~field~~ *fields* of hunting and fishing  
33 preempted by state law. The ordinance or regulation shall not  
34 indiscriminately extend or apply to any areas where ~~the taking of~~  
35 ~~fish and game~~ *hunting and fishing* may occur without endangering  
36 public health and safety nor to any lands or waters owned or  
37 managed by the state or federal government.

38 (b) The commission, the department, or any other governmental  
39 entity legally authorized to affect ~~the taking of fish and game~~  
40 *hunting and fishing* on navigable waters held in public trust shall;

1 ~~to the extent possible, ensure~~ *ensure, to the extent possible*, that  
2 the fishing and hunting rights of the public guaranteed under  
3 Section 25 of Article I of, and Section 4 of Article X of, the  
4 California Constitution, are protected in a manner consistent with  
5 those provisions.

6 (c) (1) Unless otherwise authorized by this code or other state  
7 or federal law, the commission and the department are the only  
8 entities in this state that shall adopt or promulgate regulations  
9 regarding ~~the taking of fish and game~~ *hunting and fishing* on any  
10 lands or waters within the state.

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

17 ~~(d) Local ordinances and regulations that regulate trapping are~~  
18 ~~not subject to this section.~~

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